SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 397

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS' UNION, ET AL., APPELLANTS,

vs.

DENVER MILK PRODUCERS, INC., HAROLD HENNIGH, E. W. JOHNSON, ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF COLORADO

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[fol. 1] **IN THE SUPREME COURT OF COLORADO**

DENVER MILK PRODUCERS, INC., HAROLD HENNIGH, E. W. JOHNSON, O. T. Holland, Eston Buster, Carl A. Borgmann and Walter H. Borgmann, dba Borgmann Brothers, L. C. Austin and F. S. Austin, dba Austin Brothers, Joseph Green, Flora A. Beach, Personally and as Executrix of the Estate of Fred W. Beach, dba Beach Milk Company, a co-partnership, Plaintiffs in Error,

vs.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS' UNION; American Federation of Labor; Milk Drivers' and Dairy Employees' Local Union No. 537; Teamsters Joint Council No. 54; A. F. of L. of Denver, Colorado; Daniel J. Tobin, as President of the International and Personally; Dave Beck, as Officer and Business Agent and Western States Organizer of the International, and Personally, A. E. O'Neal, as International Organizer of the International, and Personally, Harold Coffey, as Secretary and Treasurer of the Joint Council, as Recording Secretary of the Local No. 537, and Personally; Earl Christol as Business Agent of Local No. 537, and Personally; and C. W. Davis, Bertel R. Peterson, Robert Gillis, as Employees of Carlson-Frink Company, as Members of Local No. 537, and Personally; A. B. Parker, Ray Cerva and Henry Oetzel as Employees of Beatrice Creamery Company, as Members of Local No. 537, and Personally, Defendants in Error

No. 15776

Error to the District Court of the City and County of Denver, State of Colorado

Hon. Joseph J. Walsh, Judge

Abstract of Record—Filed January 15, 1947

[fol. 2] COMPLAINT

September 12, 1945, Denver Milk Producers, Inc., plaintiff, filed its complaint for damages and for injunction in Cause No. A-45099, Division 4, Denver District Court, against The International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers Union, American Federation of Labor, Milk Drivers' and Dairy Employees' Local Union No. 537, Teamsters Joint Council No. 54, A. F. of L. of Denver, Colorado, Daniel J. Tobin, as President of the International, and personally, Dave Beck, as an officer and Business Agent and Western States Organizer of the International, and personally, H. E. O'Neal, as International Organizer of the International, and personally, Howard Coffey, as Secretary and Treasurer of the Joint Council, as Recording Secretary of Local No. 537, and personally, Earl Christol, as Business Agent of Local No. 637, and personally, A. B. Parker, Ray Cerva, Henry Oetzel, as employees of Beatrice Creamery Company, as members of Local No. 537, and personally, and C. W. Davis, Bertel R. Peterson, Robert Gillis, as employees of Carlson-Frink Company, as members of Local No. 537, and personally.

Complaint alleges (Paragraph 1) descriptive names used in the complaint are:

> Denver Milk Producers as "Plaintiff",
> Defendants collectively as "Defendants",
> Owners of cattle herds as "Farmer-Producers",
> [fol. 3] Truck operators as "carriers",
> City and County of Denver as "Denver"
> Denver dairies which are union operated as "Union Dairies",
> Denver dairies which are non-union operated as "Non-union Dairies",
> Milk delivered by non-union drivers as "Non-Union Milk",
> Territory adjacent to Denver from which milk is shipped to Denver as "Milk-shed."
> Denver Dairies which are part union operated but have non-union drivers as "Part Union Dairies."
> Public Utility Commission of Colorado as "The Commission."

(Paragraph 2) impracticability of bringing all members of Local No. 537 and the union employees of the union dairies before the Court and that there is a common question of law and fact affecting the several rights and that common relief is sought. (Paragraph 3) Plaintiff is a Producers Marketing Association organized under the Cooperative Marketing Act of Colorado for the purpose of carrying on

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business in Denver and the milk-shed adjacent thereto. Sets forth provision of plaintiff's Articles of Incorporation relating to powers and relating to membership. Paragraph 4) By-Laws of plaintiff provide that any person who is a bona fide producer of dairy products in the association's territory may become a member by entering into [fol. 4] a marketing agreement in the form prescribed by Director's, a copy of marketing agreement being attached to complaint as Exhibit A. (Paragraph 6) that plaintiff supplies about 98% of milk and dairy products consumed in Denver, and milk to adjacent towns. Has marketing agreements with 1200 Farmer-Products and handles about 33,000 gallons of milk per day in Denver. Paragraph 7) Plaintiff allows Farmer-Producers to designate dairies to which milk is to be delivered unless plaintiff requires it to be sent elsewhere. (Paragraph 8) That plaintiff is not in any manner an employer or employee of any Farmer-Producers, dairy, or of any person. (Paragraph 9) sets forth the organization, status and relationships of the defendants as shown in the title of the cause. (Paragraph 10) There are about 51 dairies operating in Denver, a few of which produce their own milk, but the great majority of which purchase milk from outside sources and practically all of them from the plaintiff, or through it. (Paragraph 11) That most of the largest dairies are entirely unionized, and all of their male employees in the classifications of route salesmen, drivers, employees engaged in the production and actual handling of dairy products, regular farm hands and milkers belong to the defendant Union No. 537. That these Union Dairies are the following: Arvada Dairy, Beatrice Creamery Company, Brookridge Farms, Carlson-[fol. 5] Frink Co., City Park Dairy Co., Gold Coin, Garden Farm Dairy, Meadow Gold Dairies, Stearns Dairy Co., Supreme Dairy Co. (except drivers). (Paragraph 12) That a few of the Farmer-Producers personally deliver their own milk, but the great majority of the Farmer-Producers ship their products on trucks operated by individuals or corporations who have Public Utility Commission licenses as Public Carriers. That such Carriers are, in most cases, licensed as exclusive Carriers in certain districts, and no other carrier is available to the Farmer-Producers to handle their products from farm to dairy. That said Carriers are required by law to file tariffs of rates, rules and regulations and time and distance schedules

with the Commission, and to operate their motor vehicle carrier system according to the schedules filed by them. They are also required to operate except when prevented by the Act of God, the public enemy or unusual or extreme weather conditions, and a failure so to do will result in the revocation of their license to operate. That any interference with the delivery of milk by a Carrier to the consignee dairy will prevent such Carrier from complying with his duties as such and compel him to do an illegal act in not delivering the milk of the Farmer-Producer to his consignee dairy. (Paragraph 13) That each of said Carriers operate as independent con*con*tractors with the Farmer-Producers and not as employees thereof, with the entire responsibility [fol. 6] of the safety, route and manner of such transportation, and have never at any time had any contractual relations or any relationship as of employer or employee with any of the dairies in Denver or adjacent areas, and have never at any time been in any manner an employee of any person, firm or corporation. (Paragraph 14) That some of said Carriers have joined Union No. 537, that others have refused so to do; that some of the drivers of said Carriers are farmers handling their own milk and that of other Producers, and other drivers are employees of the Carriers; that many of the drivers of the Carriers have joined Union No. 537, some voluntarily, some by misrepresentation and fraud, that all other drivers of their Carriers had joined the union, and they would be the only driver of their Carrier refusing so to do, when this was not true; that many of such drivers would not have joined except for such statement; that others have refused to join the union and will continue such refusal, and will quit their job if forced so to do; that the drivers in the main, live in towns outside of Denver, pick up the milk in their home districts early in the morning, deliver it to Denver, and return home to other employment in the afternoon, and that these drivers must live near their pick-up area for convenience in their work, and that union drivers cannot be obtained in many of such towns. (Paragraph 15) That plaintiff is neither for nor against Labor Unions, nor in any manner [fol. 7] interested in whether milk is delivered by Union or Non-Union Carriers, either to Union or Non-Union Dairies, its sole interest and concern, as the Marketing Association for the Farmer-Producer is to sell their milk without interference or loss to processors in Denver; to comply with all

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the health regulations of Denver and the State of Colorado, and to supply the people and children of Denver with sufficient milk for their needs. (Paragraph 16) That on or about July 31, 1945, the Defendants and each of them entered into a conspiracy and agreement to prevent the delivery, processing and sale of milk and dairy products from the Farmer-Producer to the ultimate consumer in Denver and the Denver Milk-shed by any concern or party except by members of Union No. 537 and other Unions whose members handle milk in connection with sales of other food. In pursuance of said plan they agreed among other things, to do and perform the following acts:

(a) To employ and train large groups of big, brawny men of apparent great physical prowess as pickets to carry out any and all orders of the officers of the Defendants;

(b) To cause said pickets to follow non-union drivers of the Carriers while on their routes collecting milk;

(c) To prevent individual Farmer-Producers from hauling and delivering any of their own milk products to any [fol. 8] Dairy in the Milk-shed unless such farmer is a member of Local No. 537;

(d) To prevent any Carrier from employing non-union drivers to work in the Milk-shed, and in Denver, and to prevent any such driver from handling any milk therein;

(e) To cause said pickets to intercept and stop all non-union drivers before they enter the grounds of or at the unloading docks of all dairies, whether union or non-union;

(f) To order, instruct and stop all union drivers from delivering any milk to non-union dairies;

(g) To order and cause all employees of Union Dairies to refuse to process and deliver any milk brought in by non-union drivers.

(h) To intimidate all Non-Union Carriers and their non-union drivers from collecting milk from Farmer-Producers and unloading their milk at all dairies, and to accomplish the same by brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, fraud and false representations;

(i) To intimidate and coerce all Farmer-Producers and dairies which own herds from shipping their milk by Non-

Union Carriers and to require them to change to Union Carriers when such Union Carriers operate in the territory of such herds.

[fol. 9] (j) To unionize all non-union dairies in the Milk-Shed and Denver whether their employees desire this action or not;

(k) To cause great financial losses to Plaintiff, Farmer-Producers, Carriers and Dairies unless and until they join the Union and obey its rules and regulations.

(l) To compel employees of all union food stores to refuse to handle non-union milk and to strike if the same is delivered to and sold at the stores where they are employed.

(m) To use and employ secondary boycotts in connection with said plan.

(n) To unionize and completely control and dominate the handling of all milk in the Denver area, regardless of the rights, privileges and desires of Farmer-Producers, Carriers, Drivers, the Dairies and their employees, food store employees and the general public.

(Paragraph 17) That part of said plan and conspiracy was put into effect from July 31 to August 2, 1945, and then suspended to September 2, when the plan was again inaugurated, and since then the same has been rapidly developed and is daily becoming more and more effective. That in pursuance of said plan Defendants have now acted and put into effect the operations necessary to accomplish those portions of the plan as described in Paragraph 16, sub-paragraphs (a) to (i) inclusive, (k) and (m), and the [fol. 10] remainder of the plan will be put into operation in the near future unless enjoined by the order of this Court. (Paragraph 18) That said pickets have been employed and trained and put to work; that they have followed non-union drivers on their routes while collecting milk; have prevented non-union Farmer-Producers from hauling and delivering their own milk to Dairies; have prevented non-union drivers from handling milk in the Milk-Shed; have caused pickets to intercept and stop non-union drivers; have ordered and prevented all union drivers from delivering milk to non-union dairies; have ordered employees of Union Dairies to refuse to process and handle non-union

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milk; have intimidated non-union Carriers and non-union drivers from unloading their milk at any Dairies, and have employed and used brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, secondary boycotts, fraud and false representations in connection therewith; have intimidated and coerced herd owners from shipping milk by non-union Carriers and have required them to change to Union Carriers; have caused great financial losses to Plaintiff, Farmer-Producers, Carriers and Dairies. (Paragraph 19) That among the false and fraudulent representations made by Defendants are the following:

(a) Statements by said pickets to Carriers and Drivers that other Carriers or all the other drivers of the Carrier [fol. 11] (except the driver accosted), have joined the Union, and for that reason the said driver should join;

(b) Statements by said pickets that Walter C. Moore, the manager of Plaintiff, desires that all Carriers and drivers should join the Union;

(Paragraph 20) That all of said statements were false, were made with the intent that they be acted upon and they were so acted upon; that in many cases membership was secured by reason of said statements, and all without regard to the rights, privileges and desires of the Plaintiff, Farmer-Producer, Carriers, Drivers, Dairies, Dairy employees, and the public in general. (Paragraph 21) That no labor dispute exists between Plaintiff and Defendants or between the Carriers and their employees, or between the Plaintiff and any of the Denver Dairies. (Paragraph 22) That the statutes of the State of Colorado give employees the right to refrain from joining any labor organization or from participating in any of its activities; and make it an unfair labor practice for an employee individually or with others to hinder or prevent, by mass picketing, threats, intimation, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment; to engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, or coercion, the obtaining, use or disposition [fol. 12] of materials, equipment or services, or to combine or conspire to hinder and prevent, by any means whatsoever, the obtaining, use or disposition of materials, equip-

ment or services. (Paragraph 23) That said plan and conspiracy and the acts and things done under it, and intended to be done by the Defendants is illegal and in violation of Article II, Section 3 of the Constitution of the State of Colorado, the Statutes of the State, and the Rules and Regulations of the Public Utility Commission of Colorado. (Paragraph 24) That Plaintiff sells the milk produced by the Farmer-Producers to the dairies at 90 cents a pound butterfat, which is used by the dairies for bottled milk as Class I milk; that if not so sold the surplus products of plaintiff must be sold before it spoils to other dairies as Class II milk for ice cream, cottage cheese and other manufactured products at only 73.6 cents a pound butterfat, which is a loss of 16.4 cents a pound butterfat on such sales. That until September 2, 1945, practically all the milk in the Milk-Shed was sold by Plaintiff on the 90 cent basis. (Paragraph 25) That Plaintiff contracts with all the Dairies to deliver milk to each one daily, that the capacity of each of the dairies is limited; that the Union Dairies cannot operate to capacity without receiving a large proportion of non-union milk; that the non-union dairies cannot handle all the non-union milk as milk, that milk is a perishable product [fol. 13] and must be handled quickly or it will spoil; that for a short time during said conspiracy Plaintiff has diverted non-union milk from Union Dairies to unpicketed non-union dairies which thus became over-supplied and could only handle the excess milk as Class II at 73.6 cents a pound butterfat instead of 90 cents a pound butterfat. That said diversion is now rapidly being stopped by Defendants and in a short time all deliveries of milk to non-union Dairies will be completely prevented, unless enjoined by this Court. (Paragraph 26) That not enough milk to supply their customers is being delivered to the Dairies by drivers who belong to Union No. 537, and all Dairies whose supplies are being curtailed are demanding greater deliveries from Plaintiff. That three of them have already claimed damages against the plaintiff for loss of sales and customer's good will, delays, mileages and overtime of employees, in amounts in excess of $1,800.00, and demands are expected from many other dairies. (Paragraph 27) That Plaintiff is entitled to charge and does charge its members one cent a pound butterfat for all milk handled by it, that as a result of the said actions of the Defendants it has lost and will lose large sums of money because of the decrease in the amount

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of milk handled and to be handled by it. (Paragraph 28) That if the Defendants succeed in their agreement and conspiracy to prevent deliveries of all milk by non-union drivers, then all of such undelivered milk will spoil or have to [fol. 14] be dumped, to the complete loss thereof to the Farmer-Producers and this Plaintiff. (Paragraph 29) That the action of the defendants has created an emergency and critical condition in Denver and its Milk-Shed; that the production, delivery from Farmer-Producer by Carrier to the Dairies, processing, bottling and delivery of the same to the consumer is charged with a public interest, and the lives, health and safety of the entire community is affected and imperiled by the same; that any stoppage of the supply of milk will be critical to the people of Denver and vicinity and will impose a hardship and inflict a calamity upon the general public by producing an artificial, illegal and unnecessary milk shortage in Denver; unless restrained and prevented by this Court. (Paragraph 30) That as a result of said illegal plan, conspiracy and agreement the amount of milk delivered to the ultimate consumer in Denver has been greatly curtailed, much milk has been spoiled and great damage has been inflicted upon all parties against whom the Union is operating. That if said plan continues the spoilation and loss will be far greater and cannot be estimated at this time. That many Farmer-Producers threaten to sell and dispose of their dairy herds or divert their milk to other areas if said conspiracy continues. (Paragraph 31) That there is no plain, speedy or adequate remedy at law, and the continued conduct of Defendants [fol. 15] would require a multiplicity of suits, and if not restrained by this Court will result in irreparable damage to this Plaintiff, Farmer-Producers, Carriers, Drivers, Dairies and the public in general.

Wherefore, Plaintiff prays that the Defendants and each of them be enjoined:

1. From in any manner interfering with the delivery of milk by the Farmer-Producers or Plaintiff to the Carriers, and by the Carriers and their drivers to the Denver Dairies, and from interfering with the processing, sale and delivery of said milk to the people of Denver as before July 31, 1945.

2. From interfering with, hindering, delaying or preventing by any means whatsoever, the receipt, unloading, pro-

cessing, delivery and sale of any milk handled by Plaintiff or produced by its members.

3. From in any manner compelling any Carrier or his employees to join or enter into such activities of the Defendants.

4. From in any manner compelling or coercing any Farmer-Producer to join or enter into any such activities of the Defendants.

5. From in any manner causing the destruction of milk or its deterioration so as to render the same unfit for human consumption in Denver.

Also for damages against the Defendants and each of them:

[fol. 16] 1. In such sum as will fully compensate Plaintiff and its members for any claim against it by Dairies, Carriers or Farmer-Producers.

2. In the amounts lost for its members in the reclassification of its milk from Class I to Class II, and from spoilation or destruction thereof.

3. In the amounts lost in operating expenses at the rate of one cent a pound butterfat on all milk lost or destroyed by the action of Defendants.

4. For such other relief as may seem proper to the Court.

Exhibit A. Printed copy of membership agreement between Denver Milk Producers, Inc. and its producers.

Summons and Return

Summons.

Return of Summons showing service upon all defendants, including International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers' Union and American Federation of Labor, and serving a set of said copies personally on H. E. O'Neal as International Organizer thereof.

Amendment to Complaint. (Paragraph 17X)

17X. That the object and purpose of said conspiracy among the defendants was and is:

(a) To create an absolute monopoly in, and exclusive control of the handling of milk in Denver and the Milk Shed

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[fol. 17] and place that monopoly in the hands of the Defendant Local No. 537, to the exclusion of competition and free traffic therein.

(b) To exclude all but members of Local No. 537 from that right and control.

(c) To limit competition and to create monopolistic restraint of trade in the transportation, processing, purchase and sale of milk, which is a vital necessity of life, wherever and however sold for human consumption in Denver, Colorado and the Milk-Shed adjacent thereto.

(d) To cause the Denver Dairies to breach the contracts between them and Denver Milk Producers, Inc., for the delivery and handling of the milk of said Producers.

(e) To cause the Carriers to breach the contracts between them and the farmer Producers for the delivery of milk to the Denver Dairies.

Statement of Evidence

Placiti in causes Nos. A-45099, Div. 4; A-45091, Div. 1; A-45106, Div. 1; A-45112, Div. 2; A-45223, Div. 3.

LORAN D. CLARK.

Direct examination:

My name is Loran D. Clerk; I am Assistant Manager of Carlson-Frink Milk Company and have been connected with that company for twenty-two years. Carlson-Frink is operating under an agreement with the union, with the [fol. 18] standard rates of pay and commissions prescribed by the union in that agreement. We have been operating under this agreement since April 3rd. We had a previous agreement with the union since about 1938, and operate a union shop now. We do our own hiring and within fifteen days the new employees go into the union. My understanding of a closed shop is that where the union does the hiring, that is a closed shop.

In July, 1945 we had a conversation with Howard Coffey relative to the milk situation in Denver and I kept notes of those conversations, and have the book with my notes here in court. Mr. Coffey is sitting over there. In the conversa-

tion on July 28 Mr. Coffey said he was afraid he would have to prevent the Colorado Rapid from unloading milk at our plant. The Colorado Rapid Transfer Company served the area east of Denver, to the north and east, around Boulder and Longmont. He said he had gotten his orders from Mr. O'Neal, who is also in the court room. He said the reason that he had to do this was because the Colorado Rapid did not have union drivers and therefore they could not unload at our plant.

I believe the drivers for Colorado Rapid are non-union. The next conversation we had with Mr. Coffey was on the 30th and then he said he had instructed the Colorado Rapid not to unload. He evidently contacted the drivers themselves. I didn't see Mr. Coffey go to anyone and tell him [fol. 19] not to unload but I did see Mr. Christol who is here too. He had three men with him that day and Colorado Rapid didn't unload at our plant; Mr. Christol and his men were talking to the drivers but I didn't overhear the conversation, but after they talked to the drivers they wouldn't unload at the plant; they drove on.

Mr. Coffey said he would organize all lines and that a farmer producing his own milk and hauling it would have to have a card before he could unload at our docks, and Mr. Christol said he intended to even organize the farmers. He said our men could pick up the milk if they had a card but if they were non-union they couldn't pick up.

It was on Monday, August 13th that Mr. Coffey called me and said Colorado Rapid had signed the contract and it was all right to accept their milk. I believe it was between July 30th and August 13th that Colorado Rapid didn't deliver any milk at our docks.

On August 24th Coffey said that Rein's men had all signed up, and on August 29th Coffey called me and said they were giving Austin until September 5th to sign up, and if he didn't sign up we were not to receive his milk. He said the Austin truck line was the only one they were picking on at that time, that they were trying to organize. He claimed that Pioneer, Anderson of Castle Rock, Lang, Rein and Bunker had signed. On August 30th Coffey [fol. 20] called me and said they might have to stop Austin any time. Austin was delivering approximately 3700 pounds of milk a day, that would be about 400 gallons. Coffey didn't say when they would put the order into effect but he did promise me he wouldn't stop him before Satur-

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day, but on September 2nd they stopped Austin from unloading at our dock. They went out and talked to the truck drivers but I didn't know what the conversation was; I wasn't there as it was Sunday, but I know they didn't unload that day.

On September 6th they started stopping all non-union truck lines from unloading by talking to the truck drivers and telling them to go on and they had a man walking up and down on the walk with a sign, saying "Unfair to Local No. 17." I do not know whether Local No. 17 was concerned with our employees, but not to my knowledge. Our Local is No. 537. When I saw this man on our walk with the sign I called Mr. Voorhies.

It was admitted here that Mr. Voorhies was a member of Bakers' Union No. 219.

I had called Mr. Coffey but couldn't locate him, so I asked for Mr. Voorhies—I called him at the union hall. I told him they had a picket line at the plant. He was rather surprised and asked to talk to the picket and evidently at the end of the conversation Voorhies called the picket line off. The picket stayed there but didn't have the sign.

I then talked to Mr. Coffey, that same day, over the phone [fol. 21] and he said if any non-union driver unloaded at our plant the entire plant would walk off the job, so I didn't attempt to unload any.

Mr. Robert H. Reeves, who is President and Manager of Carlson-Frink, and I went to the Union Hall. We tred to locate Mr. Coffey, Mr. O'Neal and Mr. Voorhies by phone but couldn't contact them, so we went to the Union Hall at 1475 Banock St., in Denver, and asked the operator to talk to Mr. O'Neal, Mr. Coffey or Mr. Voorhies. Mr. O'Neal and Mr. Voorhies were there and we asked permission from Mr. O'Neal for some of the truck lines to come in, that is Sans and Bristol. As far as I know these are public utilities carriers, and they come from Johnstown. They haul about fifty 10-gallon cans.

Mr. O'Neal stated they wouldn't permit these drivers to come in unless they had a union card and also said in that same conversation that they had no intention whatsoever of attempting to organize the farmers, but Mr. Coffey told us to the contrary in July. As a result of the activities of the union we did not get the customary milk between September 2nd and September 12th, and this milk was evi-

dently diverted to some non-union plants. We got no milk at our plant that was delivered by non-union drivers between September 2nd and 12th, which made us short approxi-[fol. 22] mately 1400 to 1500 pounds, that would be around 1800 to 2000 gallons.

Cross-examination:

I belong to the Denver Dairy Association, that is the Denver producers Association but I am not a producer but have a contract with them, and I won't take milk from anybody unless he belongs to the Denver Producers. We have approximately eight or ten that don't belong to that association that deliver milk to us regularly, but I can't name them. This is about 5% of what we receive. According to the contract the Association has the right to divert the milk where *where* they want to.

I am assistant manager of Carlson-Frink and Mr. Reeves has charge there. I am not familiar with the way the price of the milk is arived at. The Producers is the only association of dairies that I know of *of* that is in existence at this time.

The milk that was stopped from being delivered at our place was diverted to a non-union dairy but Sans and Bristol didn't come into Denver at all for several days.

I told Mr. Coffey that if Austin brought their milk to our place that we wouldn't receive it—Mr. Coffey told us not to receive it, so we didn't. I understand that a union man, under the union rules and by-laws, will not work for a non-union man, and that is what Mr. Coffey meant.

Local 17 had a picket line at the place but when I called [fol. 23] Mr. Voorhies said it was a mistake and the picket was called off. There was one man walking up and down. That is what I called a picket line.

The Colorado Rapid Transit Company was a hauler and when they told me I should not take any of their milk I didn't take it; we had no trouble between the Colorado Rapid and the union. The Austin milk comes to our place and has since September 12th, or September 13th. There had been no picket on the Austin trucks since the 12th.

I do not know when this suit was started or why but I knew there was a truce and the Austin milk has been coming right along, and all other dairies. We do not belong to any association of dairies and I don't believe there is any Dairy Association.

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ROBERT H. REEVES.

Direct examination:

My name is Robert H. Reeves; I am Manager and President of Carlson-Frink Milk Company; I have been connected with that company since 1926. I am here under subpoena and Mr. Clark is here also under subpoena.

We have an arrangement known as the Golden Gurnsey Program. The Gurnsey Association promotes Golden Gurnsey milk sales throughout the country by licensing certain dairies to distribute this milk under that trade name. We have an agreement with them to pay a premium to the [fol. 24] farmers for this milk. We have nine or ten farmers that produce this type of milk. This national organization is known as the Gurnsey Association of America and its headquarters are in Petersborough, New Hampshire. We got an annual permit from them in connection with this program and have had it since 1939 or 1940. The program is advertised somewhat extensively but we are the only ones in Denver who handle the Golden Gurnsey milk produced under this program. We are the only ones in the Denver milk shed. A premium of one and a half cents a pound of butter fat is paid, that is a little over half a cent a quart. The herds are inspected by a representative of the Association and they give a certificate to the farmer, and on the basis of this certificate we pay them a premium for their milk, and we sell it at the same premium, about half a cent. The farmers, Harold Hennigh, E. W. Johnson, O. T. Holland and Eston Buster participate in this program and most of them have been in it since it was started. No other dairy in Denver pays a premium for that milk, as far as I know. We have about ten Golden Gurnsey shippers, and we get an average of 500 gallons or over from these shippers and the milk is all brought in to our dairy by the Austin line, I think. This shipment of Golden Gurnsey milk was shut off from our dairy on Sunday before Labor Day, I believe that was the 2nd of [fol. 25] September through September 12th, that we got no milk from those four shippers of Golden Gurnsey milk. I think the shippers lost the premium on the milk when it was shipped elsewhere.

We had some Gurnsey milk during that time, we had some other Gurnsey shippers which we could substitute for them.

We have had some meetings with Mr. Coffey and Mr. O'Neal about the union situation since July 30th of this year, I believe twice in the office of the Employers Council, and we have talked to them in the office of the Union Hall—Mr. Voorhies and Mr. O'Neal. Both Mr. O'Neal and Mr. Coffey informed us non-union drivers could not deliver milk to a union dock. Mr. O'Neal is, I think, the International representative of the Teamsters Union, and he told us he was from Los Angeles. We had no dealings with him before July 30th of this year.

When a driver with a load of milk came to the runway approaching the dock he was asked, apparently, if he had a union card; if it was all right, the man on the dock was allowed to unload him, otherwise he couldn't unload. I don't know what the signal was from the union men of Local 537 to the employees but apparently there was some. The drivers were passed by them. There were sometimes one, sometimes two and sometimes more pickets outside of our company. I don't know whether they were all pickets but there were different representatives, four or five, I guess. We didn't receive milk from Austin Brothers be-
[fol. 26] tween September 2nd and September 12 but I didn't see whether the drivers were accosted by the pickets.

Cross-examination:

I am General Manager of the Carlson-Frink Dairy and have been since 1928. We have a contract with the Producers but I do not have a copy of it with me.

We get our license to sell the Golden Gurnsey brand of milk from the Gurnsey Breeders' Association and we are the only dairy in Denver that has a license to sell that milk. They are located in Petersborough, New Hampshire. We pay for the license and anyone else could get a license if they qualified and the Gurnsey Association would have to say if they qualified. It is nation-wide in its scope. I think it is ten farmers that ship to us but I think more than that belong, perhaps. The Austin line brings us milk from four shippers but different truck lines bring it too. There are three of the Gurnsey shippers, I believe, that use the union lines and I believe we got milk straight through from them all the time, and some of them part of the time. I don't believe the union mentioned the Gurnsey milk, I don't remember that they mentioned this milk in general to me. We talked to Mr. O'Neal, Mr. Coffey, Mr. Voorhies and

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Mr. Christol. They told Mr. Clark that their men who were [fol. 27] working for us, would not process or handle milk that came in on the Austin trucks and Mr. Clark told me.

I knew that union men would not work for non-union men, this was in the agreement. I think that most of the time there was only one picket, and this was during the 12-day period that I am speaking of. This picket stopped the driver when they came in to see if they had a union card, that is when they stopped, he asked for their cards. They came up to the drivers when the drivers stopped in the driveway and asked if they had a union card and if they had a union card the milk was deposited and if they didn't have a union card, it wasn't deposited because our union men would not handle it. We were told this. We were told they could not deliver the milk with non-union men—our men would not receive it on the dock. They said they were stopping any non-union drivers from coming to the dock. No non-union drivers came to our dock for this period of time. I believe they were told not to handle the milk, the union men on the dock were told not to receive the milk. The union men working there wouldn't handle the milk.

We belong to the Employers Council which is an association of employers, where the unions and employers meet to negotiate contracts and have good relations between the union and employees. I don't know how many men are members but there is quite a large number. I think all [fol. 28] but one of the union dairies are members. I don't know whether there are any non-union dairies who are members. This Council is headed by Jim Logan and I suppose it has by-laws.

There is a provision in the contract with the Denver Milk Producers, Inc. which states that the distributors may continue to purchase milk from producers who are not members of the Denver Milk Producers, Inc. but will discontinue such purchases when and as determined by the Association but it has never been done. We signed an agreement like this but in practical operation, they do not do it. We are now getting milk brought in by non-union drivers.

I don't think the Producers Association could tell us that we must stop taking milk or that we could not accept milk from producers that used non-union trucks. They would

have to furnish us a certain amount of milk. They have not told us whom we could get milk from, and they would only be able to do it with non-members.

Several times there were more than one picket at our plant during the period when our men were not accepting milk, more than two on several occasions, but I don't know how many times. I didn't see any of these men create a disturbance or use loud language or commit or threaten to commit any physical violence.

[fol. 29] RAY WALKER.

Direct examination:

My name is Ray Walker; I am a dairy farmer; my farm is at the Stockyards Station, approximately six and a half miles from Denver. My father and I own and operate the farm. We have around forty-five head of milk stock, and other young stock. I am here under subpoena and my fee has been paid in advance.

Before this milk situation arose in Denver, we shipped our milk to Carlson-Frink all the time. This time of the year we are delivering five 10-gallon cans a day, with our own truck. I was warned on September 6th that if I didn't join the union they wouldn't receive my milk at the Carlson-Frink dairy the next morning. An employee of Carlson-Frink, the man who dumps the milk, told me. He said if I would not join the union he could not take my milk at the dock and he told me to go to the Union Hall, somewhere on Bannock Street, in Denver. I went over there and saw Mr. Coffee, he is here in the court room, he was with another gentleman, Mr. O'Neal. I told Mr. O'Neal what I was there for and he referred me to Mr. Coffey. I told him that the fellow at the plant sent me up to either join the union or they would not receive the milk. He asked me if we produced our own milk, hauled our own milk, and also if we hauled any other milk. I told him we hauled only [fol. 30] our own milk and that I was told to come up and join the union. He said in that event, if we were hauling our own milk and no other milk, I would not have to pay the initiation fee but only the dues. So I joined at that time, and paid the dues of $3.00. I paid my dues by cash and received a union button, a union book and a rece-pt No. 6309 for my $3.00. I have them with me here. I did not

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sign the application blank on the front but my signature is on the back.

Folios 172 to 175, colloquy between counsel relative to Exhibits E, F and G.

I have never talked with Mr. Van Cise or anyone representing him or the plaintiffs in this case, before I was subpoenaed and appeared here and I did not know what was going to be asked me, until I appeared here.

Cross-examination:

I was told that if we were a producer I wouldn't have to be initiated. I told them that we didn't hire anybody. I want to keep this due's book, Exhibit G, because it says on it to keep it. I don't know whether I intend to remain in the union but I belong to it at present. I may continue to belong to it. I have a union book but I don't know that there are by-laws in the book. What I read of it, it told you when to pay your dues and I can't say exactly the wording of it. I know nothing about the union principles. I joined because it was a case of "have to." The next dues are due the 1st of October.

[fol. 31] JOSEPH GREEN.

Direct examination:

My name is Joseph Green; I am in the farming and dairy business, about six and a half miles west and a mile and a quarter south of Brighton. I have 160 acres; have owned my farm about three years; have been a farmer all my life. I am thirty-eight. I have thirty milch cows and have had a dairy herd of my own about eleven years. I have delivered my milk with different truck drivers and since I was on this farm Borgmann has delivered my milk, and I suppose Colorado Rapid Transit is also available to me. I had them a few years ago, but Borgmann is on the direct line I am using now.

I had occasion to accompany Walter Borgmann with my load of milk to Denver recently. We had my milk on the truck, eight 10-gallon cans. Before this trouble arose we sent our milk to Carlson-Frink in Denver. This day we went to Carlson-Frink. First, Borgmann asked if he could unload the milk as producer and hauler and they said he

couldn't. He asked the pickets who were there. I asked if I could unload it and they said the union man would not accept it. I told them that I was the shipper and told them who I was, and that I had just my own milk but they told me that the union members would not accept it. I think this was on Monday, the 10th of September. I think it was [fol. 32] on the 7th, 8th, 9th and 10th and 11th that the milk was diverted from Carlson-Frink but since the truce I have been shipping to Carlson-Frink again. I am a member ot the Denver Milk Producers Association and have been for two or three years, I suppose.

Cross-examination:

It was not customary for me to go along with the truck hauler to deliver the milk to Denver but I went along twice, once on the 10th when I went in with the Borgmann truck and the other time was on the Saturday before when the same things happened. I just happened to be with him that time and they refused to accept my milk. Someone asked Mr. Borgmann if he had a union card and he said no, but I didn't say anything about it being my milk. It was not my truck and I was paying Mr. Borgmann for his services.

I went down there the next Tuesday or Wednesday with Mr. Borgmann, although I knew he was a non-union man, to see if they would accept it because I wanted my milk delivered to Carlson-Frink. I thought if I told them it was my milk and that I was the hauler, that it would be a different situation, for I wanted to unload my milk. They had said the union was authorized not to accept it. On Saturday I just rode along, that is all, but they said then they would not accept the milk because Borgmann was a non-union hauler.

[fol. 33] I did not discuss this with anybody and did not get a suggestion along that line from Mr. Moore. I talked with Mr. Moore on the 10th, after we left the creamery, but I didn't go down on the 7th. Colorado Rapid Transit doesn't go by my place at the present time and I don't know if they are available to take this milk. He goes on the next mile. Several years ago I did business with them, probably three or four years ago, but I don't live in the same place now. I have made no effort to get them to haul my milk for I don't want them to haul it as I don't like the

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way they handle the cans. I never had any controversy with them but I don't want to do business with them if I can help it.

JAMES L. JOHNSON.

Direct examination:

My name is James L. Johnson; I live five miles east and a mile and a half north of Brighton; I am a dairy *fra*mer; I have six hundred and sixty acres and have thirty-six head of cattle. I have been a dairy farmer about five years. At the present time I am shipping four cans of milk a day but I try to ship around six on an average. In September the milk supply is less, generally. I am a member of the Milk Producers and I ship milk to the Supreme Dairy, which is a union dairy. On September 9th I had occasion to go to town with Walter Borgmann in his PUC milk truck. We [fol. 34] went to the Windsor F*ra*m dairy. We drove up in kind of a circle to the dock and there were several gentlemen standing close to the dock. Mr. Borgmann stuck his head out of the window and he says, "Is the answer yes or no?" and one gentleman says, "No." He said, "Well, they let me unload at the Supreme, why not here?" and they acted a little bit mystified about it and came over to the truck and asked Mr. Borgmann why he didn't join the Union, that it would be simpler all the way around. The gentleman who said this is in the court room, over there, wearing a brown suit and glasses. (Witness was informed that was Mr. Coffey) I believe there were three gentlemen there. Somebody else was trying to pull in, so we pulled over to the side. Then Mr. Borgmann told Mr. Coffey, "I have customers that have been friends of mine in hard times and if I join the union you won't let me deliver to them. " He said, "That is right." He said, "That isn't playing fair with them," and there was a desultory conversation for a few minutes about the union and about trucks, and Mr. Borgmann said he was driving one truck and he had a man hired to drive the other; that during the rush period the driver of the other truck would work straight days without any time off and during the drop he might take two or three days or a month off and not be docked, that was in line with their policy; that sometimes he would

[fol. 35] come to Denver and keep the truck and stay for a basketball game and they couldn't check his hours on that. Mr. Coffey said, "You sign it and we can draw up a con- but I didn't know it was to start with. Mr. Borgmann told him to get his contract and let him see it before he did any signing, and Mr. Coffey said, "Well, we are going to get you in by hook or crook."

Cross-examination:

Mr. Borgmann said he wouldn't join the union because if he did he couldn't deliver milk to non-union dairies. Mr. Coffey said that was the idea, that he couldn't deliver to non-union dairies. I know milk is delivered to non-union dairies but it hasn't always been. The union controversies were partly with the non-union truck drivers. I do not know the name of the non-union shop that hasn't been getting milk, as I am not versed on it. I have since learned that this was the Teamsters Union, the Milk Drivers Union but I didn't know it was to start with. Mrr. Borgmann told him that he wouldn't sign the contract, definitely; he said he wouldn't sign a contract unless he could see it. Mr. Coffey said, "You will join the union if we have to get you in by hook or crook." He didn't say what kind of a hook or crook it was, and the conversation ended there.

I am now delivering four cans of milk but I used to deliver six cans, but this has nothing to do with the union, but we [fol. 36] have some dry cows. This time of year there is apt to be a shortage of milk due to natural causes. I say that as an experience- dairyman.

Lester Helburg.

Direct examination:

My name is Lester Helburg; I am twenty-eight and live in Boulder, Colorado, at 3235 Fifth Street. I am a milk hauler for Austin Brothers, since about a year ago, the 9th, I believe it is, of next month. I drive Public Utility truck. Besides driving the milk truck, I have a little place there, about two and a half acres, that I farm, have a little live stock and a milk cow but the milk is for my own use. I put in about two to two and a half hours on my route, starting about six-thirty in the morning. I am a relief

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driver and run all the trucks. I work six days a week unless we are in a pinch where one of the fellows is off, then we work straight through. We get paid a monthly salary—it is $85.00 every two weeks or $170.00 a month. No, it is $85.00 every half month. I am off one day a week regularly. We get paid one week's vacation with pay and a week without, if we want it. I was off five weeks sick once and I got paid for all five weeks, full time.

The Austin trucks cover the area of Boulder, Lyons, Hygiene, Niwot and toward Broomfield. As a relief driver, I have delivered milk to Berkeley, Wheatridge, Beatrice, [fol. 37] Windsor, Carlson-Frink, Royal Crest, Stearns, Beach, New Reliable, Almhurts and Dairy League. Up until the 12th of September or the 13th, the Beatrice, Carlson-Frink and Stearns were union dairies and the others were non-union. I didn't have any contact with the union men in regard to the union situation, about September 1st. I do remember that there were a good many union men in Boulder, I would say, early in September, around the first. Austin kept his trucks in a garage between 27th and 28th, on Spruce, in Boulder, that is toward the east edge of Boulder. I came down to work, this night there were five trucks in the garage, about twenty after six, parked my car outside and went inside, and I didn't see anything before I went in, but Gene Anderson was in there and he said, "Did you see what is out there?" and I said, "No," and I went to the window to look and there were about five cars. There were no men in the cars that I could see, but there might have been some in there. I didn't see the licenses on those cars, so I asked Anderson what he was going to do. He said he called Fred and Linton, they are the bosses, and he said they would be down. We waited a little bit and they came down and we decided to go out then, and we left the garage. I went with my brother, Lee Helburg in the same truck. We had some time to make up as it was an extra day. We left the garage and left town and when we were about a quarter of a mile out of town [fol. 38] and got out to talk to Fred Austin, one of the Austin brothers, who was following us. I looked back and there was a station wagon parked back there and Fred said that was one of the union cars, and I knew it was because I saw it at the garage. I wouldn't say absolutely, but it looked like there were from three to five men in the station wagon. My brother and I went on north and turned

off on a side road about two or three miles from town, then I could see back and I could see these cars following us—the station wagon and one car is all I saw. We stopped a mile east on that road, left off part of our load, we had some ice cream on there, and then we started up and left and that is the last we saw of them, that is those particular cars. We got pretty well around our route, stopped in Lafayette and traded our milk around for the different dairies, and there was one car loaded with two men, parked there, and they followed Jake Roth around that morning. We changed our milk around so each truck would't have to go to all the dairies, that is Roth, Gene Anderson and I transferred milk, then we pulled down east onto the highway and Gene Anderson was in the lead and Lee and I came out there onto the highway (Gene Anderson was first, then Roth and then ourselves), heading toward Denver. They stopped back on the street until we got onto the road and then they pulled in behind us. There were two men in that car and they [fol. 39] pulled in right behind us and started to follow us out of town and when we got to just about the city limits, they decided to go around us and got between us and Jake, they pretty near crowded us off the road and we had to slam on the brakes to keep from hitting them. Then they followed us to Denver, followed us around to each of the dairies. They followed us all, because Jake's truck and our truck went to all the dairies, because we didn't want to let Jake go by himself. I think Jake didn't want any trouble and he wanted protection if he was bothered. We got our milk delivered that day and didn't see any pickets.

Two or three days later Jake and I, that day we were riding together because we didn't feel like, where there was a bunch of union men, we didn't know what might happen, so we rode doubled up. After we unloaded our milk we had to go back to Carlson-Frink to straighten out a check, maybe about some haul on some milk, I don't remember just what it was, and as we came around the corner there going to park, there was a union man there that walked out in the driveway as we came around. We pulled right on by, we didn't indend to go in there. He was right in the center of the driveway as we went by, so we couldn't have gone in there where he was standing so we drove in past the driveway and got the check tally. As we came out, one of the fellows, this fellow came over and said he wanted to talk to us. I don't think that man is here today. He wanted to

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[fol. 40] know if we had a load. "Yes," I said, "we have a load on." He said, "I want to talk to you a minute," so we stayed there a little bit. "You said you had a load of milk." I said, "No, we had a load of empty cans." He must have thought we had milk on and he might have a chance to get us into the union.

Jake was driving and this man talked to him and another fellow came up and they were going on telling us about how much better off we would be to be in the union. We got into an argument there. They didn't give us any facts about how much good it would do us, and never have offered that I know of any good it would do us. Well, I don't remember the argument, just how it went or the words of it. Finally, we left and that is the last I saw of them. They didn't say anything to us about other drivers having signed up, not our drivers. He did say that pretty near all the drivers had signed up and I said, "Well, I know because I talked to some of the fellows this morning that had not signed up," and he asked me to name some of them and I said, "Well, there is Merle Carlson, he hasn't signed up." He said, "Oh, yes." Merle Carlson is with the Carlson Truck line. I said, "No, I talked to Merle Carlson this morning and he said he had paid $3.00 but hadn't signed up." Then there was Hall that was supposed to have signed up and he hadn't signed up, because we had talked to his driver. We knew that to be a fact that he hadn't [fol. 41] signed up. Then we left. It was the same identical deal with Alex Laughbaum as with Carlson. Alex had told us he had not signed up, that he had paid the $3.00 fee but hadn't signed up. That is all that happened that day.

I was with Lee the day we went in to the Berkeley Dairy, about this time. That is a non-union dairy at the north edge of Denver. We pulled in there and as we got out of the truck a car pulled up behind where we had just come in the driveway, and the fellow sat there a little bit, we were unloading milk, and finally he got out and came over there. I had never seen him before and didn't see him after that. He came over and talked to us and asked us to join the union. I don't believe he is here today. In the place where we put the milk in, at the dock, where we push it inside to dump it, there is sort of a platform that sticks out outside about a foot and a half or two feet from this little doorway. It has rollers and you set the milk inside

and roll it inside on these rollers. Well, this fellow came up and stuck his head in or put his head down so he could talk to the dumper inside and asked where the boss was. The fellow said he didn't know, or he had gone down town or something, and we were supposed to be unloading milk, but that didn't seem to make much difference to him, he put his head in anyway. This roller affair couldn't hold all our milk and he stayed there and was trying to talk to us. [fol. 42] We wanted to get away from there, we didn't have time to talk and get to the dairies too. He stayed right in the way where we should have been putting the milk. Finally, he asked if we were going to join the union. We told him no we didn't have any reason to. He said, "Well, I think you would be better off," and he wouldn't give us any reason why we would be better-off. Well, we left there and that is the last we saw of him.

On about September 8th we were over at the Royal Crest, which, as far as I know, is a non-union dairy. We pulled up into the alley from the south. Mr. Borgmann was in there. There was a man parked in the alley in a car, and as far as I know he was taking down the license number., I couldn't tell what he was writing or what he was doing, but he had a booklet or piece of paper in front of him, that is all I know about that.

On Sunday, the 9th, we went into the Beach dairy, that is I did, for I was alone that day. There was a picket, I would call him a picket, out in front of the Beach Creamery. He was leaning against the back of one of the Beach delivery trucks. He had a sign on his back. I didn't read the sign but they told me there at the creamery he was a union picket. I went into the Beach Creamery one day with my brother and when we drove up there was two men sitting in a car—I believe there was two in that car. They didn't do a thing. We pulled up there and waited [fol. 43] for a truck to back out so we could unload, and in the meantime, another fellow came over to the car and got in, and then another fellow came and started to get in.

One of the Austin brothers is an air pilot, Fred it is. I know he was following us because he told us he was and we saw him flying around over his drivers, checking up on them.

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Cross-examination.

The first time I saw these union men was in Boulder. I went to the garage early one morning, I think it was September 1st, and saw five cars and a bunch of men. I think it was approximately eight or nine men, but I never had any conversation with them or they with me. They were parked in the public highway in ordinary cars and the men stood on the side walk, talking to each other. The same day as we went out of town we saw a station wagon and another car, about a quarter of a mile out of town, on the highway, but they didn't stop us. That day they followed us as we went to the Beach Creamery first. It was at the Carlson-Frink dairy where we had an argument, on a different date. We went there to straighten out a check deal —we didn't deliver milk there or get any cans. The picket was there in the middle of the driveway. We didn't try to get in but stopped the car on the street and went in to the office. When we came out there was an argument be- [fol. 44] tween Jake and I and two union men. We were arguing against the union and they were arguing for it but there was no disturbance. They wanted us to join the union but would give us no good reason why we should and I gave them my own reasons why I wouldn't join. One of these fellows, one of the union men, told us that Carlson had joined the union but I knew he hadn't, then he told us that Hall had joined and I told him that he wasn't telling the facts. Another occasion a man stuck his head in the doorway where we put the milk, talking to the man who dumps the milk, and he was blocking us from putting our milk in. We asked him to get out of the way and he stepped back but stood right in the way, so we were held up there for a little while. He started to tell us about the union and the reasons we should join it and I said I wouldn't join, then we had an argument about it but it was gentlemanly on both sides.

When we got to the Royal Crest we saw a man parked there in a car. He had a book in his hand and he was looking at the book, but we had no argument with him.

Then we went to the Beach Creamery, and there was a picket there, with a sign on his back but I didn't read the sign, and I didn't talk to him. I delivered the milk there but this man didn't interfere. A little time later, at Beach's

there were two men sitting in a parked car but I wouldn't say there was a picket there.

[fol. 45] On September 9th, at Beach's, there were two men there and I would say one was the picket and he had a sign on his back but they didn't say anything to us. On the other occasion, there were two men there, sitting in a parked car but they didn't have on any signs and we didn't talk to them and they didn't interfere with us.

Mr. Coffey was asked to produce the application of Merle Carlson and a colloquy followed between Mr. Van Cise and Mr. Coffey relative to the applications of Merle Carlson and Burt Hall.

Redirect examination:

Neither of the Austins ever told us not to join the union, and they didn't tell me to join the union, nor any of the other drivers, to my knowledge.

Recross-examination:

Mr. Austin never asked me to join the union but he told us to do as we pleased about joining the union. This was the first time they tried to sign us up. I don't know who the man was but he said they were going to organize the drivers. I didn't see the man myself. Mr. Austin talked to the whole group and he told us to join or stay out, as we wanted to. This was when we got back off our routes. We were all just standing there having an ordinary conversation and we didn't talk about the union until the men they had talked to mentioned it. They had talked to Gene Ander-

[fol. 46] son and he mentioned it. He told Mr. Austin there was a man on the dock at Windsor who said they were going to organize the drivers but I don't remember what the rest of the conversation was. All Mr. Austin said, when we told him there was a man there who wanted us to organize, was that we were to do as we pleased, join or don't join. That is all I can recall.

Lee Helburg.

Direct examination:

My name is Lee Helburg. I drive for Austin Brothers and I have been there approximately a year and a half. I have another occupation, I take care of some business and

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do a little farming and milking. We have around twenty acres, my father-in-law and I together. I work approximately from 6:30 in the morning—sometimes different hours, depending on call, approximately six and a half to seven hours, and I go back to Boulder every day. I am twenty-six.

On September 1st I had occasion to talk to some union men at Carlson-Frink. Two men, Mr. Coffey and a man they called "Spider", who are there in the room, they came around and asked me if I was ready to join the union and I told them no. They asked me to give some reason and I simply told them I didn't see how we could benefit, and I asked what the benefit would be to us and they couldn't tell [fol. 47] me a thing, so they went on to explain, tried to explain where they could do me some good and I couldn't see it. In addition, I asked about the wage scale and they wouldn't tell me what the wages would be or any other way they could help us, and I told them I wouldn't join until the others joined, too, that I was sticking with the bunch. I don't recall any more that was said that particular day. I don't remember whether there was anything said that day about violence but at one time they asked me to join the union and I told them no, I would not join, and they said, "You mean to sit there and tell me that you would rather have violence put on your outfit rather than join peacefully." I told him that was up to them, if they wanted to put violence on our outfit that was all right with me, but I still would not join until the rest of the outfit did. This was at Carlson-Frink on approximately September 1st.

On Sunday, September 2nd, that was on Sunday morning, we had run our routes and were on our way into Denver and along about eight miles out of town there was a car we presumed to be a union man started following us in. I think there were two men that followed us to our first dairy, as I remember, and then we didn't see any more of them. We got to the first dairy and Gene Anderson's truck had pulled in before us and he pulled to Windsor and the picket wouldn't let him in, so he came back to Berkeley. We [fol. 48] had to meet and exchange our milk and he told us they had put the picket on Windsor. We exchanged milk at the Berkely Dairy and we had slips of paper with the dairies wrote down on where we should take this milk if the pickets wouldn't let us go to the dock at Windsor. We didn't pull into the dairy at all because we had been told they had

pickets there, so I took my milk to Beach and New Reliable that day. These men appeared to me to be large men but they showed no signs of violence.

I was with my brother when a car driven by union men crowded between me and Jake Roth. That was when the cars came to Boulder and started following us. After we shook the three cars back of us we had pulled into Lafayette —Jake Roth had already pulled in—a man did pull into the yard where we were exchanging milk and they stayed out in the road, so we exchange- our milk and we were talking there. He couldn't pull through the place, the yard, Gene Anderson had taken the lead, then Jake pulled up onto the highway, so I did the same thing. I started out close behind Jake. I presume we traveled probably fifteen miles when this man came around us, didn't give us any warning or signal, and he pulled in on us, wanted to stay behind Jake. He pulled in front of me and crowded me out, I had to cramp my wheels to the right and hit my brakes to keep from hitting him. He was trying to stay behind Jake. We [fol. 49] came to Denver and they stayed in there. When we got into the creamery at Berkeley these men had pulled out in the street, sat there and watched us unload, and then Jake seemed to want some protection in case anything happened to him, so the two trucks of us, my truck—I and Lester was in it—and Jake stayed together the rest of the day and delivered the milk to the different creameries. It was along about three o'clock in the afternoon before Jake got to the last creamery and then the man left and that was the last we saw of them that day.

On September 7th I was with Gene Anderson, or rather Gene Anderson was with me in his truck—we were in the same truck. We had pulled into Beach that day, it was our first stop, and were going to unload our milk and the union men walked up, there were two of them and they were fairly large men, medium size, I would say. They told us we couldn't unload milk there that day, that there was a picket on this. The union pickets told us that. We had pulled away from the creamery after they told us we couldn't unload. We went to a telephone at a filling station and asked Mr. Moore what to do, and as I remember, we didn't get hold of Mr. Moore, it was the other fellow that is in the office with him, and he told us to go back to Beach and unload the milk the same as we had been and he would [fol. 50] send police protection if there was any violence, so

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we went back. The police drove up and went around the block and that is the last—we had pulled up and stopped, another truck was unloading and these two union men came up and the conversation started again, and they said, "aren't you going to your other creameries and unload?" and I said, "No, this is where we unload our next milk," and he said, "You mean to sit there and say you have guts enough to pull through a picket line and unload your milk?" and I said, "That is just exactly what I mean." I don't remember any of the other conversation, but after he had asked me that, he told me I would be blackballed at the union from then on, so I pulled on in and unloaded my milk, and that is the last I remember of that day. I had five cans of milk spoil for two different shippers on a certain day, and they had not been in the habit of having milk spoil. I would say it was due largely because it couldn't be delivered promptly at the time it should have been.

Cross-examination:

On September 1st I had a conversation with Mr. Coffey and Spider, and Mr. Christol, at Carlson-Frink and they asked me to join the union. They had just a normal discussion with me and they pointed out a few things that might be of benefit if I joined the union, but I told them [fol. 51] I would join the union if the others joined, I wouldn't have any choice other than that. I have objections to it, because I do not like the unions in this particular case and I do not see where it would benefit us. I think it was September 1st but I ain't absolutely sure; I cannot remember the exact date.

I saw approximately eight cars at the garage there in Boulder, plus about three on the highway. They were sitting in front of the garage. It was about 6:30. I arrived there after my brother. I wouldn't know the exact number of men in the cars but there were from two to five in each car. You might say they were together but they were probably on different sides of the street. There was no disturbance, and I didn't talk to any of the men in the cars. I don't know exactly that they were union men.

My brother and I came to Denver, through Broomfield and Lafayette, driving along the road and at the speed we usually did when this car pulled between my truck and *and* the truck in front of you, that is the only time that hap-

pened that I remember. This car was one that followed Jake Roth from his home in Niwot. He followed him around his route, I saw it. It was a 1935 Oldsmobile but I don't know the license number. Jake Roth, Gene Anderson and I were driving, the three trucks in a row, at approx-[fol. 52] imately fifteen miles an hour, as we were just starting up from a stop street in Lafayette. This car cut in front of me while we were in the city limits. I do not know the reason for this car pulling in front of me other than it looked to me as if he was trying to crowd in.

On September 2nd, that is the day they put a picket on us on Frink and Windsor. There were two men in a car. There was a car north of town that followed us into Denver. They drove behind us and they were big men; we were going approximately forty. I didn't talk to these men and there was no violence. The truck met me at Berkeley, where we exchanged milk and they told me the picket was on. Gene Anderson told me. He is one of the Austin drivers. From there I went directly to Beach, after I have made the delivery at Berkeley. I was supposed to make the delivery first to Berkeley, then to Frink. We exchange our milk on the trucks and left there and went to Beach. This was on September 2nd. That day there were union men there, I believe, but I unloaded and went right on to my next stop, on this date. The union men were sitting in a car at Beach that day. I presume they were union men but I didn't talk to them. This picketing at Beach's was on September 7th, or around that date, I can't remember dates very well. I don't know whether it was Labor Day or the day thereafter, but I believe it was [fol. 53] either the 5th or 7th they picketed Beach. I don't remember the exact date.

We are supposed to deliver certain milk at a certain place and my milk was delivered first, but while I was talking with the union men, it set in the hot sun and some of it spoiled, but it was delivered before noon and that is the usual time.

Redirect examination:

I don't believe that Mr. Coffey and Mr. Christol said anything about the rules of the union provided that every member must attend one meeting a month or that if we didn't a

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tax of $1.00 was imposed. I live in Boulder and it would be practically impossible for me to attend once a month.

Recross-examination:

He just discussed the benefits he thought I would obtain by joining the union but didn't say anything about the rules, about attendance at meetings did not apply to country hauls.

EUGENE ANDERSON.

Direct examination:

My name is Eugene Anderson; my age is twenty and I drive a milk truck for Austins. I live at 814 Spruce Street, in Boulder and am married. I have lived in Boulder off and on for about seven or eight years—about seven [fol. 54] years. I get back to Boulder from driving my milk route about one o'clock, and the rest of the time I help my dad on the farm.

On August 15th I was at the Beatrice Creamery, it was about that time when this first started, I saw Mr. Coffey there. He is here in the courtroom. I don't remember who the other man was that was with Mr. Coffey, but I would say he is just a little larger than Mr. Coffey. I pulled in and unloaded milk and backed up to get my empties when Mr. Coffey and another fellow came up and asked something about the union, and they said they were going to try to organize the drivers and get them in the union—there wasn't much said, they said they would be back to see us later. I did not join the union for several reasons. One was, I don't like the way they operate. I don't like anyone to tell me when I can work and when I can't work.

I saw Mr. Coffey a week or so later at the Beatrice Creamery. He came out and asked me if I was going to join the union and I told him no, and he said, "Well, it is a cinch you are going to have to join the union sooner or later." He said, "We want to get you drivers organized and we can help you a lot," and I told him I didn't want the union or any part of the union, and I pulled out. He said quite a few of the drivers had signed up but didn't tell me the names of any of them, and I didn't ask him.

[fol. 55] A few days later I had another talk with him at the Beatrice Creamery. There was a fellow with him that wore glasses, he was about Mr. Coffey's size. I believe it was the same man who was with him the second day. He talked to me about the union, telling us how it would benefit us if we joined the union, and he said he had a couple of the others drivers on the Austin route, said they would sign up if the rest of us would, and I told him I wouldn't sign up, and then Jake Roth drove in there, and he said, "Shorty here signed up." I turned around and said, "Jake, did you sign up?" and he said, "No, I didn't." Mr. Coffey said we could keep our wages that we had, that we could draw our contract to suit ourselves. I told him we didn't want the union, that we were getting as good wages as anybody and that the union wouldn't help us a bit and I did not want it.

The day the union men followed the cars around I went to the Austin garage in Boulder to get my truck, about a quarter after six. I saw ast ation wagon and three or four cars parked between 27th and 28th on Pearl. The men were standing out around the cars, talking. I would say there were anywhere from eight to twelve men, and they all had Denver licenses. I would say they were about average size and I noticed two or three that I would say were a little bigger than average. They all looked husky. I drove [fol. 56] that day. One car followed me out and it had two men in it. It followed me about half way around my route. When I went to Mr. Delaney's place to pick up milk, that was a Stearns shipper, he happened to be about my fifth stop, to pick up his milk. I asked him, "Do you see what is following me?" He said, "No." I said, "Well, there are some union men out there following me," and he said, "Well, I think I will go out and talk to them," and he went out just ahead of me.

I went on around my route. I picked up one more stop and they caught me after one stop at Mr. Delaney's place, and I pulled up at his place, and Fred was circling around in the airplane and I knew it was him, and then that was the last I seen of them until I pulled up town. Then I went back to the Austin garage. There were two Denver cars parked on Pine St. there. They didn't follow me but there was one car that picked me up after I left the garage. I went in one door of the garage and out the other side to

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avoid these two cars. They picked me up again at Nine-Mile corner. I recognized one man in that car, it was Mr. Coffey, he was driving alone. He followed me until after the second stop and then he picked me up again at Nine-Mile Corner and followed me to Lafayette. That was all the following that was done of me that day. I don't remember the date but it was after they stopped us [fol. 57] down at Windsor. I would say it was about the 4th or 5th.

I went into the Beatrice Creamery on September 2nd. There was no one with me. There were two men came out and got in the driveway in front of my truck. They stood right there until I came to a stop. I couldn't drive in unless I hit them. They came over to the truck and asked if I had a union card. One of them was Mr. Coffey and I told him no, I did not have a union card. He said, "well, you can't unload here today." I said, "all right, I can always take it back to Boulder." He said, "Do you want a union card?" and I said, "No," and I went back to Berkeley. I would say there were about five men in three cars parked there. When I came around the corner they opened the doors and had one foot on the running board. I went from there to Berkeley, where we were to meet. I changed my Frink and Windsor on to the other two trucks and left my truck at Berkeley. Jake's truck took all the Windsor and Lee's truck took all the Frink. I did take my truck that day because I had Stearns milk, and I gave them my Frink and Windsor and I took the Stearns milk, and there was one car that followed me. There were four men in it. I didn't recognize any of them. I was supposed to go to Arvada and leave off some cans, and I went down on Federal and I met the other truck coming up on Federal, it [fol. 58] was around about 26th. I had called Mr. Hillmeyer, the Manager at Stearns, and told them where I was. I asked him what to do and he said he would meet my truck, I forget the place. However, he was there in his car. I pulled around the block and they were still following me, and we went over to the Rocky Mountain Producers, I believe it is. Mr. Coffey was with these men. I unloaded at the dock—it wasn't at the dock, it was a door beside the dock. I didn't have any conversation with Mr. Coffey there but Mr. Hillmeyer talked to him. I saw them talking there. Mr. Hillmeyer finally got them to let him take his

milk on down and unload it that day, and they went down and unloaded, and I got my empty cans and went home. I got my empties at Stearns.

On the 2nd we pulled in and drove past Mr. Coffey. Jake Moreland was with me. I drove up there and stopped and they pulled right up behind me. This was Mr. Coffey and the man in the car. They pulled up within two feet of my tail gate and when he pulled around there I pulled away so he could get in behind me. They pulled up so they prevented my getting the tail gates back so we had to unload through the side door.

Cross-examination:

It was somewhere around August 15th I went to the Beatrice Creamery and had a conversation with Mr. Coffey. [fol. 59] I do not remember the exact date. He talked something about the union. I don't remember a whole lot what it was, and when he started to leave he said, "We will be down to see you." He said he was going to try to organize the drivers. It was sometime later when I talked to him next along the same line.

It was on the 5th that I went to the garage in Boulder, that is the Austin Garage, on 28th and Spruce, I was the first one there. I had been there about five minutes when Mr. Helburg came in. There was a station wagon and three other cars parked over between 27th and 28th. That's all there were there. They didn't come over to talk to us; they didn't get out of the cars, they were just talking among themselves, across the street from the garage. Then we started out in our truck and took the main road through Lafayette and Louisville, into town. I was in the lead; nothing out of the ordinary with me; I just went about my business. My first stop was at the Wheatridge Dairy. I didn't deliver milk there, I changed it to another truck. The other two trucks were behind me. I turned off at Broomfield, they went on around the highway. I do not know where they went. I went to the Berkeley Dairy and made my delivery with no interference. I went from there on one of the other trucks. I left my truck at Berkeley and went on the other truck with Lee, [fol. 60] I believe it was Lee I was with that day and helped him make his deliveries but nothing unusual occurred that day.

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Next they put the picket on Beach and I went there with Lee to make a delivery. There was one man there with the picket who had a sign on. He was the only one with a sign but there were two men that came over to the truck, Mr. Coffey and another fellow. They told us we couldn't get through the picket line, but we made the delivery anyway and no one tried to prevent us. From there, I can't think where we went. The first I saw Mr. Coffey after I left the Delaney place, I noticed him down on the Arapahoe road that comes out of Boulder. He was alone in the car, a 1939 Plymouth; it was a light grey. I had no conversation with him. Mr. Delaney talked with the other men that was following me before that but there was no disturbance. I made the rest of my deliveries in the usual way and the main discussion I had with Mr. Coffey was about the union. He was attempting to advise me that I should join the union but I had another opinion about it.

E. H. LAMBOTTE.

Direct examination:

My name is E. H. Lambotte and I am president of the Piggly Wiggly Western Stores Company. We operate under a franchise out of the main office at Atlanta, Georgia. [fol. 61] We, in turn, sub-franchise to individual operators in this state. The individual operators own their own stores and we also operate individual stores. We purchase for the stores and we supply the stores with their merchandise. We perform any function that any chain store would do, with the exception we have individual ownership. In Denver there are twenty-four Piggly Wiggly stores in the trade area. We have one in Aurora and one in Arvada.

I talked with Mr. A. E. O'Neal, Mr. Coffey and Mr. Voorhies of the union, regarding milk. I believe it was about the 11th of September that Mr. O'Neal and Mr. Voorhies were in my office. All they said at that time was that they were having a little difficulty with the Beach Milk Company. They requested me to give Mr. Beach a call, and try to put a little pressure on him or suggest to him that he sign the contract with the union. They said that it might be necessary, if Mr. Beach didn't sign the contract, to perform what they called a secondary boycott, which would require their picketing our stores. They explained

in detail that it was a procedure followed by the union. I asked them, why the Piggly Wiggly, that it wasn't their fault, neither was it Beach's fault. The main purpose of their visit was a request for me to talk to Mr. Beach and see if I could influence him in straightening the matter out with the union. It was merely a friendly discussion and I [fol. 62] had heard nothing of this trouble between Beach and the union. They asked me if I would tell Mr. Beach that they had been to see me. They were perfectly open about it and asked if I would use my influence to get Mr. Beach to straighten it out. I called Mr. Beach but there wasn't much I could say, outside of that Mr. O'Neal and Mr. Voorhies had visited my office and had made the request that I talk to him and see if they could square the thing out. I knew nothing about it. I believe this was the 18th, instead of the 11th. I believe it was a Tuesday—I am fairly certain of that.

On Wednesday afternoon, Mr. Coffey told me they were going to picket the stores the next day, that is all of the Piggly Wiggly stores that accepted Beach products. I asked him to wait a minute because I didn't quite know how we were going to get our supply of milk. I was then taking the position that the rest of the stores would take. Beach had been supplying our stores with a considerable amount. All of our stores took from Beach. They also had, in most instances, some other dairies. In my conversation with Mr. Coffey I asked him how many stores he had informed that they were going to picket the next day and he said eight or nine. I asked him if he didn't think it would be wise to contact all of the stores before he did that, and also to give us a chance to make some arrangements for another source of supply. I believe in between [fol. 63] there I called Mr. Beach, and asked him if he had made any decision and Mr. Beach wasn't very talkative in regard to it, couldn't give me much information at all, and I called Mr. Coffey back again and asked him what he would do in my place. He was very considerate of our position, because we would have been without supplies, and he turned me over to Mr. O'Neal. Mr. O'Neal came to the telephone and realized our position. He said he thought they should put the picketing off until all the stores could be informed and until I could have some time to get other sources of supplies, and I told him when he had his men contact the stores to have them talk to other dairies —

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supply merchandise and try to make arrangements with them and also to call me. I told Mr. O'Neal I would contact the Beatrice companies. They were the only ones large enough to supply our stores, because Beatrice was also supplying most of the stores, and I promised Mr. O'Neal I would talk to the Beatrice Creamery the first thing in the morning.

I didn't talk with Mr. W. T. Maxwell of the Clerks Union at any time. Mr. O'Neal said he had contacted Mr. Maxwell, who is secretary of the Clerk's Union. I am not sure that Mr. O'Neal talked to me about his conversation with Mr. Maxwell but Mr. Maxwell was familiar with the situation of picketing the stores as a secondary boycott. I talked [fol. 64] with Mr. Beach in between my talk with Mr. Coffey and Mr. O'Neal and we did mention whether he could get any source of supply for me, but he wasn't very takative. I think he did tell me he might be able to get a source of supply for us, if he couldn't supply the stores, but he did not notify us that he had been able to do so.

I had a talk with Mr. Struble of Meadow Gold, before I contacted the stores, and asked if he could supply the stores. He said he could not do so, they didn't have sufficient supply. I didn't contact anyone else so I didn't have any other source of milk lined up. When Mr. Struble left he said, "if you get caught in a tight pinch, this is the opportunity I have been waiting for, now, we can do somthing." Mr. Struble is the wholesale contact man for the Beatrice Creamery, the Meadow Gold. Nothing was said that day about getting in a mess if they picketed our stores. That may have come up in a previous conversation. This is the next day that I talked to Mr. Struble of Meadow Gold.

When I originally talked to Mr. Coffey and Mr. O'Neal they agreed to put off the picketing because they didn't want to hurt Piggly Wiggly stores—we were caught in between. They said they would put it off until all the stores were contacted and that it would be probably a day or two before that could happen, and of course it would [fol. 65] require one or two days for us to make any arrangement for supply.

My talk with Mr. Struble of Meadow Gold was on Thursday afternoon, the 20th. Some representative was there, I don't recall his name. Store 16 we operate ourselves. They buy from Meadow Gold as well as Beach, and Mr. White told me that the representative was there and if

they accepted any products the next day it would be necessary for them to picket the store. That would be Friday. I asked Mr. White if the representative was still there and whether it was to be Friday or Saturday. He went back to this gentleman and said that he told them it would be Friday, that if they accepted any merchandise Friday it would be necessary for them to picket the stores, this was the 21st. I called Mr. Beach and told him not to service the stores as of Friday morning because we didn't want to be picketed. I had our contact man call every store and advise them not to accept any Beach products and that we would continue to find a source of supply, he to talk to the alternate dairy that was supplying them and see if they could get sufficient supplies or enough to carry by until the thing was straightened out, but no contact except that with Struble, was made. To my knowledge, none of the stores had any source of supply.

[fol. 66] On Friday, the 21st, I was given a copy of a temporary restraining order. Then I called Mr. Beach and asked him what it meant, and he said it meant the unions were restrained from picketing our stores as a secondary boycott, and I asked whether that really meant what it said, and he said he didn't know, that he would call his attorney, and he called me back and said it was absolute law and that it would be impossible for them to picket the stores. I then asked him if it would be possible for him to go ahead and supply milk and he said he thought he could do it and he went to servicing the stores that afternoon. Mr. Coffey then called and told me we could buy milk from whatever source we desired, that they had a restraining order and were not allowed to picket our stores. We have no authority to tell our stores whether or not to join the union. It is up to each store about that. It is up to the man who owns the store, whether he will have an agreement with the Clerks Union or not.

We do not tell them whether they should join the union or not, they know that is our method of doing business. I wouldn't say it is a matter of no concern to us as we are concerned about all of the actions of the stores, but the final decisions is theirs. I am here under subpoena.

[fol. 67] Cross-examination:

I am not sure that all of our stores have union agreements with the Retail Clerks but the large majority do have such

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an arrangement. We have always been friendly in our relations with the unions. Mr. O'Neal and Mr. Voorhies simply asked me to use my good offices with Mr. Beach, I presume, because we are probably one of his best customers, but I couldn't say about that. I talked with Mr. Beach and I don't recall what his answer was but he tried to explain some of the details of the mechanics of the thing, which I wasn't familiar with at all. It was all Greek to me, I couldn't quite grasp it. I raised the question then with Mr. O'Neal and Mr. Coffey, that I would like to be given the opportunity to get milk from some other source and they said that would be all right. They were very cooperative in our position. I tried to contact one other source of supply.

There were no threats of any kind in my conversations with these gentlemen and there were no pickets placed at our stores. I had no conversation with the representative of the union who said they were going to place a picket, that was a conversation with the manager of our No. 16 store, but there was no statement made to me directly. The only conversation I had about it was with Mr. White, the manager of No. 16 store. He is now on vacation. He [fol. 68] went back and talked to the union representative who was in the store at the time, then came back to the telephone, and talked to me.

Once I called Mr. Beach with reference to this matter and he said he had not reached any decision. He said he might later decide. That did come up in the conversation. I feel certain. That was on Friday, the 21st, or possibly before that, I wouldn't say definitely. You must remember my conversation with Mr. Beach was merely on a friendly basis, trying to avert things, and I do not recall all the conversation. My conversations with everyone was on a completely friendly basis. I believe the stores got their milk every day. I never heard to the contrary and I think I would have heard if they hadn't, as I am the manager.

Redirect examination:

The union representatives that I talked with named a number of dairies to me that would furnish a supply of milk, they never specified any particular dairy. They said, "If you try this dairy, this dairy, this dairy, or this dairy," none of which I called, outside of Meadow Gold. They were emphatic in saying they were not in the dairy

business, had nothing to do with what the dairies could do. I remember Mr. Coffey was very emphatic in that, but he did name a number of dairies, where I could get milk. We had, at the general office of the Piggly Wiggly, no other [fol. 69] source of supply than Beach that we had been able to arrange for. None of the managers of the other stores called and told me they had made arrangements for another supply of milk. Our contact man called Mr. Voorhies but I couldn't tell what the conversation was about whether the stores refused to accept Beach milk, but I can say I feel confident none of them would have accepted the milk.

G. L. EICHHOLTZ.

Direct examination:

My name is G. L. Eichholtz and I am plant manager of the Beatrice Creamery, which is also know as the Meadow Gold Creamery. I have been with the company here in Denver for the past two years.

A. B. Parker, Ray Cervo and Henry Oetzel are employees of our company and are members of Local Union No. 537. On about July 30th Mr. V. L. Hubbard of our office, came over from his office when the Colorado Rapid Transit truck was backing up to our dock to unload, and there were three men on our docks. The first thing that happened, these three men were asked to get off our docks. Howard Coffey was one of them, another was a big fellow that represented himself as a member of 17, and the other I don't know unless it was Mr. Christol. The trucker was trying to unload his milk and Mr. Hubbard said we would [fol. 70] accept the milk and it was put on the track or chute that goes into our plant. The milk was in 10-gallon cans. Mr. Hubbard and Mr. Coffey were talking and in the conversation Mr. Coffey said he would pull the men out if we accepted the milk. Mr. Hubbard said, "Do you mean a picket line?" and he said yes. Mr. Hubbard said to the boys, "Don't dump the milk, don't touch it," and the milk was put back on the truck and it pulled away.

On Labor Day, the 3rd of September, that was the day some of the trucks were refused to deliver milk at our docks. On the next day, the 4th, I believe it was on Wednesday, or it might have been Tuesday, every man was supposed to have a union button on when he unloaded at our

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dock. I was told this by the fellows at the back dock and by Mr. Coffey. He gave me instructions that nobody could unload unless they had a union button. I don't remember who was with Mr. Coffey when he told me that as we talked so many times, but it was usually Christol and Coffey together. I don't believe there were over three union men on our dock at a time. They were not carrying signs and I don't know whether you would call them pickets or not. There were men there around the docks who were not working for our company; they were union men, there where the trucks drive in. They were there every day during the time that they were asking that the men have [fol. 71] a button, until the last couple of days. They started about September 2nd, on Sunday, the day before Labor Day and up until it came out in the paper that the truce was made, whenever that was. It was a few days before the truce that the union men ceased to be around. I asked Mr. Christol what would happen if we accepted non-union milk and he said he only worked there and he didn't give me any answer as to what would happen, he was only a worker.

Mr. Parker is known as "Curly" Parker, he works in the receiving room, receiving the milk; he samples and weighs and is in charge of receiving the milk. He said he couldn't handle any non-union milk because he was subject to a fine if he did, a fine of $100.00 he told me. This order of the union definitely did create a shortage at Beatrice that we otherwise would not have had. During this time, from September 2nd, our average daily shortage was from 10,000 to 14,000 pounds a day, that is about 2,000 gallons; it is 8½ pounds to a gallon, or whatever it figures. We were not able to get a supply of milk from union drivers to take care of our shortage during that time, although we made an effort to do so but couldn't. It left us short with our customers and our deliveries to them.

I sent our truck to Johnstown and got about forty-five cans a day, some days and that is not included in this [fol. 72] shortage. There were a few days I didn't get it and then I went after it, which helped a little bit. That was the only extra supply that we were able to get. I am under subpoena.

Cross-examination:

My firm is under contract with Mr. Moore's association, the farmer-producers, and they are supposed to furnish us milk. We have a contract with him and when we are short of milk we take it up with Mr. Moore. I told him we were being short of milk and for the Lord's sake do something for me and he said he would do all that he could. I believe he got some Johnstown milk for me, maybe a few cans and I believe he gave me a few cans of Brighton milk, a few from day to day, it wasn't very much. I made it my business to find out what became of the milk that our employees would not accept. It is quoted from my man that the milk went to Beach's and the New Reliable, and to another dairy that I don't know the name of. I knew Beach was non-union and the New Reliable is non-union. The non-union dairies were getting more milk and we were short. I believe one or two times we did get milk from Beach's shippers. I believe one day we got forty cans. I can't give you the date but it was this month, before the truce.

I had heard there was a picket on the Colorado Rapid [fol. 73] Transit. The union men were down at our plant too but they created no disturbance and there was no violence. The conversations were heated arguments and they got pretty loud. That was the morning they were trying to unload off the Colorado Rapid. That was sometime back in July, but after that everything was straightened out, so far as Colorado Rapid was concerned. That was the only occasion when there was a heated argument. The other conversations were ordinary, orderly conversations and there was no violence or threats. The union men were on our dock, on part of our building and they were asked to leave by Mr. Hubbard, this was on July 30th and they left. This is the only time, they were on our dock, and the other times they were on the street. It is company property but there is an alley. It would be hard to say whether they were in the alley or on the property, but they conducted themselves in an orderly manner and neither Mr. Hubbard or I requested them to leave.

I had a talk with Mr. Coffey yesterday on the telephone. I told him that during the time that our milk was shut off, that is our non-union haulers, that we lost some milk we were not able to retrieve, and I asked him to see if he could help us get it back and some of the milk has never

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come back to us. Some of the shippers that have been coming to our place for fifteen or twenty years haven't come [fol. 74] back. One of them is Ed Watson. Our supply is still short. Since the truce we have been taking milk from everybody. Milk was short before this started, there is every year, that is, during the harvest season. That is independent of any union controversy.

Redirect examination:

Our shortage of 10,000 to 14,000 pounds daily is over and above the normal shortage, but I don't take into consideration any figures as to the normal shortage due to the season of the year.

We have a union contract. The trucker sets the milk on the chute; he backs into the dock and unloads it on to the track but during this controversy he wasn't allowed to do this; he couldn't unload on the dock. Our shippers are the ones who usually determine where they want to send their milk to sell it and some of the shippers are no longer doing business with us since this controversy, although we have contacted them to see if they would come back but they went elsewhere.

Recross-examination:

I am not too familiar with the contract which we have with Mr. Moore but I know that he can designate and has designated what dairy should get the milk and how much they should get. I have talked to Mr. Moore since this truce about getting more milk and he said he would make [fol. 75] an effort to get these shippers back for us and he may or may not have made the effort, but they didn't come back. I took this up first with Mr. Moore one or two days after the truce, but I haven't taken it up with him in the last few days. My man or myself took the matter up with him several times. We named the truck line, Burt Hall Truck Line but I didn't name the shipper. The shipper designates the truck line that is going to bring in the milk.

Redirect examination:

Not all these shippers are members of Mr. Moore's association. I deal with probably five per cent who are not and one of these shippers that didn't come back is not a

member that I happened to find out about. I got twelve cans of milk from him.

A. B. PARKER.

Direct examination:

My name is A. B. Parker; I am one of the defendants in this case. I am a member of Union 537 and I am here under subpoena.

I am receiving clerk at the Beatrice Creamery; I receive the milk at the dock. I had instructions not to unload anyone that wasn't a union member. I wasn't told directly what would happen if I did but I was told that I would be fined if I did. Some member of the union told me that. I don't know any of them personally. Mr. Coffey didn't tell [fol. 76] me that but some member of the union told me I would be fined but they didn't say how much, but I know the by-laws. They didn't tell me any specific amount. I think the by-laws provide a $100.00 fine but I wouldn't be sure. I told Mr. Eichholtz I would be fined $100.00 if I handled it. I was told not to let any non-union milk be delivered but not as early as the 2nd. I was not there on the 2nd. I was there on the 3rd. We never had any orders not to receive any until Thursday, the 6th. From that time until about the 13th we didn't receive any non-union milk.

Cross-examination:

I am one of the defendants in this case; I didn't do any violence to anybody down there; I didn't threaten anybody; nor coerce anybody. I know I am a defendant in this case and that I am enjoined and that I am being sued for getting an injunction but I do not know what I have done to get this injunction. I read the complaint clear through.

I am fifty-eight; I weigh 180.

E. E. HILLMEYER.

Direct examination:

My name is E. E. Hillmeyer; I am the proprietor of Stearns Dairy.

Documents were marked for identification as Plaintiff's Exhibits H and I.

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[fol. 77] On April 3rd I signed a contract with Local Union 537 that reserved two paragraphs as a dispute. They are marked with a pencil in Exhibit D. This dispute was referred to the United States Conciliation Service as the union and I were not able to reach an agreement. Mr. Coffey and I signed a statement of the issues remaining in dispute and those are our signatures.

I got a letter from the National War Labor Board saying this dispute had been certified to it and this Exhibit I is the letter I received from them.

Folios 481 to 486, colloquy between Counsel and the Court.

I had a hearing before the National War Labor Board on that controversy. Mr. Coffey was present, represented by himself and Mr. Pixler, who is one of the representatives of the union and the matter was taken under advisement by the National War Labor Board but no decision was reached.

About the 8th of September I was called out to the plant of the Stearns Dairy, located at Cherry Creek Drive and Alameda. My checker, Lester Jones, called me at a quarter to five in the morning and told me the union was out there and wouldn't let him go out with the milk. He checks out the drivers. I had a contract with the union that covers everything except the amount that was paid my drivers, whether they were paid on commission or wage scale. [fol. 78] When I got out there there was a union car sitting out there with Mr. Coffey in it, that was the only one I recognized, and the trucks were not going out. There were probably three men in the car with him. I went over to Mr. Coffey and asked what the trouble was. He first said it was accepting non-union milk. Well, I didn't think that was the case at all so I said to Mr. Coffey, I wondered why he couldn't get in touch with me and meet and not pull anything like this. Mr. Coffey said he had tried to get me the day—that was on Thursday, but he couldn't reach me by telephone. So then he asked me about the wage dispute and wanted to know what I would do to settle the wage dispute, that was pending before the National War Labor Board and I told him I would pay my drivers $200.00 a month flat salary and give them $100.00 each back pay to April 1st. The checker had told me they wouldn't let us go out with the milk but gave no reason. We start about 5 o'clock making delivery. I had on hand about 5400 quarts

of milk and if it hadn't been delivered that day it would have spoiled.

I told Mr. Coffey then I would give him $200.00 and he said, "Wait a minute until I talked to the boys," and my drivers were over there and he talked to them and came back and said they wanted $210.00. So I asked him, I said, "Can we have a meeting about this tomorrow? Let me [fol. 79] think it over." He said, "No, we want it settled right now." He didn't tell me they would go out if it wasn't settled but I knew they wouldn't go out, so I finally decided to give them $210.00 and $100.00 back pay. I then entered into a written agreement stating what I had agreed to.

Document marked for identification as Plaintiff's Exhibit J and handed to witness.

That is the paper that Mr. Coffey and I signed. Mr. Coffey told me then that the argument he had was that I was taking non-union milk. He had ordered the men not to go out, I know that. He told me he wanted the wage dispute settled.

I got my milk on September 2nd, Sunday. They called me on Sunday morning from the dairy plant and told me there were two cars out there and they were going to stop all Austin milk, and there were 7800 gallons in that truck, so I had to have the milk, so I transferred the milk to the Rocky Mountain Dairy. When I got to the Rocky Mountain Dairy to pick up the milk on my own ranch, on the Boulder Highway, between Broomfield and Lafayette, where I have some cattle and produce some of my own milk, they had the milk unloaded off the Austin truck and Mr. Coffey and Mr. Voorhies were there. I think maybe there were one or two more with them. They were in a touring car. The Rocky Mountain Dairy is located on East Colfax. I went over to [fol. 80] the car and said, "What in the world can I do to get this milk?" I said, "Can I haul this milk myself?" and Mr. Coffey and Mr. Voorhies said I could haul it myself. So then they let me take the milk from Rocky Mountain. At first they told me I couldn't move it. I told them I just had to have the milk and asked what I could do to get it and he told me I would have to haul my own milk or have a union truck driver haul it. I told them I would haul it. The next day I drove that truck myself to the Boulder County and picked up the milk and when I came back to my ranch to pick up my ranch milk there were two cars sitting in the highway so I drove to my house and

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drove in there to pick up the milk, and after I drove in, Mr. Austin drove in with his truck, but his truck was empty. Then Mr. Coffey came down to the ranch. He was in one of the cars that were parked there. They told me I couldn't unload any milk off the Austin truck. Well, there wasn't any milk on the Austin truck, I had already picked that up, from the shippers. So the Austin truck drove in just to pick up the empty cans. Then I loaded my own truck and drove the truck into Denver myself.

We had a rather heated argument there. for naturally I didn't like it, but we didn't have a heated argument at my plant the morning of the 6th or 7th.

Austin ordinarily brings in the milk from my own ranch, [fol. 81] but he couldn't continue to bring it in after this controversy started. I got the Pioneer truck line to haul it. They are a union concern. I would say that covers what occurred on this situation during the month of September, only my boy had to *to* pick up all the milk on the Austin line every day until this was settled, until the injunction. I got all of the milk that was handled by the Austin truck line from about the 2nd of September until about the 12th, but Austin didn't haul any. I didn't lose any shippers.

Cross-examination:

My controversy here is over whether Austin can haul my milk. The proposition of wages was a matter which was in dispute and was up to the War Labor Board, and this was settled on September 8th. I know that on September 8th the war was over and the War Labor Board was really out of existence. The War Labor Board had sent this dispute back for us to settle and I don't think it should be settled that way. I am not trying to bring in any patriotic issue against these boys. The dispute was over $30.00 a month, but on the morning it was settled it was over a sum of $10.00 a month, back pay that was retroactive to April 1st.

If there was a settlement of this issue it would be retroactive to April 1st and I considered that fair.

I had to haul my own milk, I guess, about a week. I was [fol. 82] not able to get any of the Austin milk from September 2nd or 3rd, until the time of the truce. I was not a party to the truce. I had nothing to do with starting this case. I didn't know they were going to start a lawsuit

as soon as the truce was arrived at. The truce was satisfactory to me.

Redirect examination:

My dispute with them was not over milk but over whether I paid my men a commission or salary, and that was the dispute before the War Labor Board. I had to settle it at 5 o'clock in the morning. We had a hearing; Judge Knous was the Public Relations member of the panel, and D. J. Ryan.

CECIL E. ROUSE.

Direct examination:

My name is Cecil E. Rouse and I am proprietor of a Piggly Wiggly store, which I own. It is located at 9064 East Colfax; it is a non-union store. I am in the Piggly Wiggly group of stores. We arrange to get milk ourselves, that is, we just buy milk from whoever we want to. However, Beach has been more or less supplying the bigger part of the stores. They didn't furnish all of our milk. We got a small amount from Frink and Meadow Gold. I would say we got about 95% of our milk from Beach.

I am here under subpoena and I haven't talked to you until I came to the court-room today.

[fol. 83] On about Wednesday or Thursday, the 19th or 20th of September, two of the union men came out to see me. I do not know their names. They told me they were from the Teamsters Union. They told me if we received any Beach milk the following day we would be picketed, that was on Thursday, the 20th. I didn't tell them anything. They said the pickets would go into effect the next day, Friday. The next day, when Frink and Meadow Gold drivers came in I tried to get milk from them to supply the shortage and I got enough to supply my demand. After the restraining order went into effect I went back to the old situation. That was the only time I contacted the union men.

Cross-examination:

There was no picket on my place. I have a non-union shop. We have six employees.

EMERY DORSEY.

Direct examination:

My name is Emery Dorsey. I am proprietor of the Piggly Wiggly store at 230 East 13th Ave., Denver; I am the manager; have been there about a month. It is owned by someone else. It is a union shop; we have a contract with the Retail Clerks Union and our clerks belong to it. I am here under subpoena and the first time I talked with you is here in the court room today.

On Thursday, or I believe it was Monday or Tuesday, I [fol. 84] am not sure, I was contacted by the union men with regard to the milk situation in my store. Bill Maxwell of the Clerks Union, was one of them and I was introduced to this Mr. Coffey, who talked to me at that time. They told me they were having trouble with Beach and maybe I could call Beach and see if I couldn't help a little, put a little pressure on them. I don't know what kind of pressure they wanted me to put on them. They said if we took their milk we would be picketed. Of course, that is the way I always took it that would be done. So I called Beach and talked to him about it and told him if we were picketed we would not accept his milk, if there would be a picket put on. I am not sure when this was, but sometime the early part of the week. The next time they contacted me was on Thursday, the 20th, that was the day before the injunction against the union. Two men came out, Mr. Coffey, I believe it was Coffey, and a large fellow, I didn't know who he was. They just said they were going to picket the store if we accepted any milk the next day. Nothing was said about getting rid of the Beach milk we had on hand. That is about all that was said on Thusday. The same two fellows came out on Friday, early Friday morning. I guess they thought I had accepted milk from Beach. I had not. We had some carry-over from the day before, and they told me I had to get rid of the milk. I think they thought I had [fol. 85] just got it, I am not sure. Later I heard the injunction had gone into effect so I could get Beach milk.

I talked to Meadow Gold the day before to see if they could not boost up their order a little bit. He said he wasn't sure, that they were a little short.

WALTER SILCOTT.

Direct examination:

My name is Walter Silcott; my place of business is 1201 East 13th Ave., Denver. I own the Piggly Wiggly store at that address. It is a non-union store. I have been owner a little over five years. I am here under subpoena and have not talked to anyone in regard to being a witness.

I believe it was on Thursday, the day before the restraining order was put on, I believe it was Mr. Coffey and Mr. Christol called on me with regard to delivery of milk, and they said they were from the union. They introduced themselves. They told me that they had been having trouble with Beach and if we accepted Beach's milk the following morning they would put a picket on the store, and I told them it didn't seem right they should put a picket on a non-union store when they had a fight with somebody else; and they said they had a right to do that, and they asked if I wanted to give an answer yes or no, whether I would accept the milk the following morning, and [fol. 86] I said, no, I wouldn't give anything definite until I had consulted the Piggly Wiggly office, because I was a member of the group, and the next day the injunction went into effect. That is the only talk I had with any of them.

HAROLD K. HALL.

Direct examination:

My name is Harold K. Hall; I am the creamery foreman at Brookridge Dairy; have been there practically fourteen years and have been foreman that long. Brookridge Dairy is a union dairy and all of the employees are members of the union except me, the office force and the repair crew. Some of the women in the creamery are members of the union. Mr. Coffey told me that the women would be let out as fast as the union could replace them by men; that I would have to let them out, even though they were members of the union.

On September 2nd Paul Dinsmore and three or four other men came out and said they were there to keep the Austin truck from unloading its milk. Mr. Dinsmore is some representative of the union. He always comes out and

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collects the dues off the members for Union 537. I asked him that day if I could unload. He said, "No." And I asked what would happen if we unloaded. He said, "Well, we could pull the men out of the plant." He didn't say he would. So we didn't unload. Austin didn't unload, we [fol. 87] met him another place. None of the non-union carriers that day did unload. They were picketing that day and they didn't want to unload Austin's truck, and we had several other shippers, individuals, who produced their own milk, that brought in their own milk that day. The union men were in the yard from 11 or a little after, until about 2. There were three or four men there. I wouldn't say for sure whether there was four with Dinsmore, or three. They finally—I would say it was about 1:30 or 2—they went out in the street off of the property, but up to that time they were on our property. No non-union trucks unloaded then, although we needed the milk badly. I sent two trucks down town, one to the Puritan Dairy, where some milk had been left for us, to pick that up and it had already been picked up by Austin and we met Austin's truck and brought it to our plant. We picked up about fifty cans, about 500 gallons. I had no conversation with Mr. Coffey about picking that milk up, before we got it that day. The next day, Monday the 3rd, Austin's trucks didn't attempt to pick up any of this milk. We sent our our trucks to town to pick up the milk. Austin's truck was supposed to have left seven cans at a different location, which we didn't pick up at that time. That milk was finally picked up, which I found out a way late that night. I sent down to pick it up but didn't get it, and I had another truck go to [fol. 88] town and I had him look around and pick it up, this was about 4 o'clock that afternoon.

I had a conversation with Mr. Coffey about getting that milk before I found it was delivered to our plant. He called me that afternoon by telephone; it was between four and five, I wouldn't say for sure, because I was working in the yard and did not look at the clock when he called. He told me not to dare use the milk. I asked him if this wasn't a free country and he said yes. And I wanted to know if one man ought to dictate the same as Hitler and he said he wasn't dictating, it was the vote of the union and he was carrying out the orders of the union, and he said someone would get shot if I used that milk. I told him I would use that milk if someone did get shot. He also

told me if he had been there he would have taken the men off because he wasn't a union man and let the milk set, and he said, "If I catch another man on a non-union truck I will take him off." That would have let the milk spoil.

I later found this milk that Mr. Coffey had referred to had been picked up by my truck and brought to the Brookridge dairy. Half of it was soured the next morning and we couldn't process it, and we couldn't use it. Approximately forty-five gallons went sour. To my knowledge, one man came in and told me not to take any milk delivered by non-union trucks. He was running the truck to town [fol. 89] picking up milk off these truck lines. His name was Lindsey White. We got the milk from non-union shippers on Labor Day; it would be September 5th that we missed out on the first shipment. Labor Day half of it was sour, and up to the 13th we didn't get any non-union shippers. That was Austin Brothers. On Sunday, the 2nd, we didn't receive milk brought in by individual shippers. It was left at the Windsor dock and they wouldn't let anybody pick it up. This was from George Ellenberger. It was a woman that left it for Austin to bring to our place and we lost her milk that day. She was bringing in about thirty gallons that day. We always picked up the milk she delivered at the garage. Just once we were not able to get her milk. Up to that time she delivered it to Windsor or Beach Creamery, where our trucks could pick it up. She produced her own milk. Mr. Coffey told me that she would have to have a union card to deliver that milk, although she was a farmer-producer. He never told me anything definite would happen if we took her milk. He, himself, never told me what would happen if we took non-union milk. Mr. Dinsmore told me they could pull the help out of the plant. Mrs. Ellenberger from Brighton is the lady I am speaking about.

We lost in the neighborhood of 100 gallons a day as a result of not being able to unload non-union milk. We were never able to replace that milk and are short right now.

[fol. 90] Cross-examination:

This conversation with some union men about women workers was in July, I believe—in July or the 1st of August. I had several conversations with Coffey, I couldn't tell you the exact date. At that time we had one girl in there and

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he was telling me that we would have to let our union women go when the male help was sufficient to take their place. At that time we were working three women and we are working two women now in the plant. One runs a bottle washer and one a filler. I was connected with this plant before the war but we didn't employe women then. We couldn't get men so we employed women. I figure a woman has a right to work if she has someone to support. I find some women do better work than men, since I have had them in the plant. We didn't have women before the war and the reason we employed women was because we couldn't get men.

On September 2nd there were three or four union men on our property. I did not ask them to get off. They were not violent. They told me I couldn't accept non-union milk. I didn't take non-union milk, which is milk hauled by non-union men. They said they were there to see that the Austin truck didn't unload its milk. They didn't threaten me. Some man said they could pull the men out but they didn't say they would. I knew they were union [fol. 91] men. On the night of the 4th, over the phone, I told Mr. Coffey that this was a free country but did not mention that to the union men at the plant. Mr. Coffey is the man that said someone ought to be shot. I asked him if he was trying to be another Hitler and tell us what to do. He was telling me not to unload the milk. Mr. Coffee didn't say the only thing we can do is pull the men out, but the other man told me that when they drove up. I believe in the right of men to work and I don't believe in Hitlerism. I also believe a man has a right to quit work if he wants to. They told me that if I continued to take Austin milk they might have their men quit work. I didn't know that the first thing Hitler did was to destroy the trade unions. I never kept up on Hitler but I said Coffey was dictating the same as Hitler was. A man has a right to quit our plant if he wants to. I brought Hitler into the case because he was telling them they had to quit. It is the right of a free American Citizen to quit if they want to. He told me if I used that milk someone would get shot. He meant if I picked up the milk I would get shot. I wasn't afraid of Coffey. I would have went after my milk that day if I had had time to do it. He doesn't scare me a bit. Mr. Coffey was pretty serious. I went right on though for there is only one life to live and I was willing to jeopardize my life

if he wanted to string for it. I am not scared of any of them. Later I had one other conversation with Coffey. [fol. 92] It was three or four days after that. It was over the phone. He wanted me to change and get a union driver to haul certain milk into town. In a way it was a friendly conversation. There was no more talk about shooting. When he called me he told me to get a certain driver, but I didn't get scared when he mentioned his name. We didn't pick up any more Austin milk. No Austin milk was delivered after September 4th, up until September 13th. We didn't go and get it because the manager at Brookridge didn't want to cause a disturbance. If we picked up the milk there was other things than the men being pulled out that might have happened if we did. I don't think any of the men would have quit if we had accepted the milk, but it was Lowry's business, government business that we used this milk for. We took it up with the Government but we quit because we didn't want any disturbance on the routes. I was told if a man picked up that non-union milk they would be taken off the truck. Mr. Coffey told me that. I didn't know of any case where it was done but I, myself, wasn't afraid of hauling that milk and being taken off the truck. It was in the same conversation with Mr. Coffey, when he told me someone would be shot, that he said they would take the man off the truck. I didn't want the truck of milk setting on the street spoiling, if some non-union hauler was taken off the truck—it was bad enough as it [fol. 93] was. One shipment of milk went sour, that was picked up Monday, September 3rd, Labor Day. This milk was brought in by Austin. We sent two trucks to Royal Crest to pick up that milk. It is in the 400 block on Logan, I believe, South Logan. That is about seven miles from our place, between six and seven miles. It was delivered there sometime between two and four or four-thirty that evening. I don't know what time the truck picked it up. He hadn't returned to the dairy when I left. It got sour from sitting out so long. I don't know how long it sat out. It was milk from the night before and that morning. It wasn't left in the Royal Crest, it was back of the Royal Crest, in a shed. It was pretty hot that day. Austin Bros. left it there. They didn't leave it the first trip. It wasn't left until later. They left it between 2 o'clock and 4. They didn't know what to do with it. They knew this milk was going to us but they couldn't deliver it. They always

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left that milk there. I didn't call Austin about leaving the milk there. That had been the policy since we had started taking milk, to leave that milk there, and he was late for some reason that day. He had a pick-up truck which picked up this milk and brought it to our plant. It was the policy to leave it at Royal Crest until his truck came along and picked it up. They brought this milk in and left it and then the Austin truck would pick it up and bring it to us, to our place. It was good milk when it was left there but [fol. 94] it had to be held over for the next processing. It got sour between the time it was milked and the time we were ready to process it. I wouldn't say it soured in two hours. It soured from too long exposure to the heat. The union is responsible for that for if they had left the truck pick it up and deliver it as it should be it wouldn't have got sour. If the Austin truck had picked it up and brought it to us it wouldn't have soured. We had two trucks there at different times and the milk wasn't there either time, until the third trip. We didn't have a truck there right at the minute and we lost 100 gallons of milk that day.

We are members of the Producers Association, that is Mr. Moore's association. I don't know anything about his being under contract to deliver our milk, that would be up to the manager, Mr. Ned Grant. I had several talks with Mr. Moore but not concerning that milk, it was about getting more milk. The first time was sometime in July, before any controversy with the union, as we would use more milk. He got that milk from other dairies. I don't know from whom. It was brought in by the Franktown truck, picked up by Austin Brothers and brought to our dairy. The next time was right after the strike, not strike, but when they refused to unload non-union milk. I asked him for more milk then, and he said he didn't think it was possible to get more delivered there at that time, on account [fol. 95] the non-union trucks were not delivering to union dairies. I would just as soon take milk from union trucks or non-union trucks, either one. We were in desperate need of milk after we lost that Austin milk. I didn't ask him why because we are a union dairy. It is up to the individual man whether he wants to be a union driver or not. I don't know whether he is a union man or not. I know we are in the association. He said they were short on milk, the milk for union dairies. The non-union trucks couldn't deliver any milk to us. I never asked him why he couldn't get a

union driver to deliver milk to us. I didn't figure it was any of my business. My business is taking the milk, processing it, and seeing it is delivered. I did go outside of my function in some respects when I called Mr. Moore. The management of the dairy is supposed to give me all the milk I need. He wasn't there at the time I made the call. I told him substantially what Mr. Moore said.

HOWARD ALLISON.

Direct examination:

My name is Howard Allison; I am the manager of the Piggly Wiggly store at 685 South Pearl St. It is a union store. I was contacted, I think it was Thursday morning, by some union representatives. I don't know the gentlemen's names, there were two of them. They came in about [fol. 96] 10 o'clock and asked for the manager and came back to me and said they were out there on the Beach milk situation and hoped they didn't have to resort to picketing. I really hadn't known anything about this situation and it kind of surprised me, and I said, "What will I do for milk? I have no other source of supply." Well, they didn't know but they were willing to help, and I suggested that with their permission I would buy Beach's milk that day because I had no other contact, and they gave me that permission and so I went ahead and bought the milk and they left. That was about all there was to it. There was no further conversation that day.

The following morning, that would be the 21st, they came in the morning and looked in the dairy box and saw Beach's milk there and said, "We want that milk to be out of there this morning." I said, "I still have no contact and that is milk from yesterday," which it was, "and I don't propose to destroy it." They said, "Well, you will have to have permission from someone higher up," and they gave me Mr. O'Neal's telephone number, and I called Mr. O'Neal. He asked to speak to one of these gentlemen and he talked with him and then they gave the phone back to me and Mr. O'Neal said, "I told him to give you permission to dispose of this milk, to sell it." And I think that was about the end of that. I had no further conversation with the union representatives. I would not be positive about who these

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[fol. 97] men represented, which union. I am here under subpoena.

Cross-examination:

I have seven employees and they are all members of the Clerks and Butchers Union.

COBERT LAWS.

Direct examination:

My name is Cobert Laws; I am manager of the Piggly Wiggly store at 1491 South Pearl St.

Last Thursday morning, I suppose it was the 20th, a couple of gentlemen called on me. They came in and asked if I was the manager. They told me they had come to talk to me about the trouble with Beach and wanted to know if we might be able to cooperate with them, and I said, "In what way do you mean?" "Well," he said, "perhaps you can call them up and ask them or tell them that you might think it was best that he sign up," or something like that. I didn't call him. I told the gentlemen I was not in sympathy with them, the union. I don't think they answered me on that. A little later on I asked them just what was the deal on it. They said, "Well, we will just have to throw a picket line around the store and none of the union drivers would cross the picket line, whether they were milk, bread drivers, or what." I told them I would talk to the [fol. 98] owner and asked them to come back in the afternoon and see Mr. Ferguson and talk to him. There was no further conversation. We are a non-union store. It looks like the two gentlemen sitting over there who came to see me that day. I think those are the two men, Mr. Coffey and Mr. Pixler. I am here under subpoena. To my knowledge they didn't come back. I told Mr. Ferguson they were in.

We carry strictly Beach milk. We had no other source of supply at all. We made no effort to procure milk elsewhere.

Cross-examination:

This conversation was carried on in an ordinary way and there was no violence and *and* no threats unless you want to call throwing a picket line around the store a

threat. They didn't put any around. They said they would have to. There was no loud talk and no disturbance of any kind. Our milk was delivered each day as it had been in the past.

Redirect examination:

This was on Thursday, the 20th.

ARTHUR DYKSTRA.

Direct examination:

My name is Arthur Dykstra; I am manager of the Piggly Wiggly store at 1215 East Wesley Avenue, Denver; it is a non-union store.

Last Thursday morning, September 20th, I was con- [fol. 99] tacted by union representatives with reference to union activities. I don't know the men by name. They told me they were union representatives. They inquired if I was selling Beach milk and I told them yes. They asked if I knew they were having a little trouble. I said "I heard a little bit about it," and went into a little detail. They said, "You will have to discontinue handling Beach milk. If that is not done by tomorrow morning we will have to come and picket your store." They meant on September 21st. Then I said to them, "Where am I going to get my milk?" I said, "I need milk in my store. If you fellows are going to stop Beach from bringing milk here, what am I going to do, the way the milk condition is, scarce and hard to get? I am not able to get any other source only through Beach, which is supplying us with the milk." And they said they would assist me in trying to get milk elsewhere, but there was no definite terms. So then I told them it was up to me whether I would have milk or not. I had no further contact with them that day, and I have had no other conversation with any of the union representatives.

We have five employees. We get all of our milk from Beach. I have not made any attempt to get any milk elsewhere. I am here under subpoena. I had no other source where I could get milk. I was almost positive that I couldn't get any milk.

[fol. 100] Cross-examination:

The conversation with these two men last Thursday morning was just an ordinary conversation. There was no loud talk, no boisterous action, no disturbance, no threats, only of picketing the store. Our store was not picketed. We got our milk on the 20th and on September 21st, and have got our milk prior to that time and since that time; we have been served just the way we were in the past, except I did get my milk late for a couple of days. They had trouble getting out of their warehouse, the plant, as I understand; of course, I don't know.

Redirect examination:

Two men came in to see me that day. One gentlemen is sitting over there. I wouldn't know his name.

Mr. Coffey was asked to stand up but the witness said he couldn't be sure he was the gentleman. He also stated he couldn't swear that Mr. Christol was one of the gentlemen. It was agreed that it was Mr. Coffey and Mr. Pixler.

LEMUS ALM.

Direct examination:

My name is Lemus Alm; I am owner of the Almhurst Dairy, at 190 West Nevada Street, Denver. We started the new plant there about a year ago. We moved over there sometime in May, I believe it was. I don't remember [fol. 101] the exact time when we started doing the brick work. The has been quite a long time since it got started, and then it was stopped. In September, 1945 we were having work done on the new building. We had a contract with union men to do the work, union bricklayers. They were laying brick at this time. We were building a dairy building for our dairy. It was to cost somewhere around $40,000 when finished. On September 15th they thought that about four more weeks would complete it. I think there were three union bricklayers working there at the time.

We have only seven men in our dairy; most of the time it should have been eight. We are non-union dairy. We had never been a union dairy. The men never asked me

about joining a union, we had no conversation about that, until the middle of September. On September 17th Mr. Coffey, the very first I ever knew of a union, he called me up about it and told me he was coming out to see me. I recognize him here in the court room. He wanted to see me that same day but I couldn't go then, so he came on the following Monday; that would be about the 21st. No, it was about the 17th, on Monday. Mr. Coffey and Mr. Christol came together. They had a contract. The conversation occurred at the dairy, I believe that it was in the morning sometime; I am not sure of that, but I think it was. I can't recall the words but they wanted me to [fol. 102] sign this contract. That was what it amounted to. They had a typewritten contract with them. They thought I should join the union and sign this contract. I told them I wasn't ready, I had at least to look it over and think it over and tell them the following day. They said something that day that Beach was about signed up, that is the Beach Dairy. I think Christol was asked why they were signed up and Mr. Christol spoke up and said, "He was just in the place where he had to sign." Beach was already picketed at that time, I think. I think that is about all that occurred on Monday.

I believe it was the next day that they wanted me to be sure to be ready. "Well," I said, "it is too dusty down here at the dairy," so I asked them to come to my house where we had a little room in the basement, so they did. It was the same two men, Mr. Coffey and Mr. Christol. In the meantime I had called Mr. Logan's office, which I was a member of the Council. Mr. Hall was there before; Mr. Hall of the Employers Council. He was there with me, and he and Mr. Coffey was doing the actual talking. Something was asked if Mr. Beach would have signed, would we then sign. Of course, we wouldn't answer that until we later looked into it. So Mr. Coffey said he would picket our place unless we signed it, which they did the next day. That was all that was said that day.

[fol. 103] The next day I came to my plant, the pickets were there and every man had left. Every one of the bricklayers had quit, also the plumbers and electricians had all gone home. The next morning they came back, I wouldn't let them stay away. The picket with the sign on was there for one day. I didn't pay a whole lot of attention to the sign but I think it was "Unfair to Teamsters Union," I

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believe it was. We called Mr. Coffey from Mr. Logan's office the very same evening this happened—I believe from Mr. Logan's office, that is the Colorado Employers Council, and Mr. Coffey promised to take the picket right off, which was done, if I would sign the contract. So the next morning we called all the men back to work, all the union men. We were unable to get any non-union bricklayers to do this work. The union bricklayers, to my knowledge, were not around doing nothing. I did a lot of checking to see if there were any nonunion bricklayers that were available but there was none to be found. I had to have that building for my dairy. I would not have signed this contract if the bricklayers had continued to work. There was no reason I should, the men weren't signed in the dairy. There wasn't a one that I knew of that belonged to the union at the time I signed the contract. One might have held a withholding card, I believe it is called. I signed the regular form of contract.

[fol. 104] I think I was paying a little more than the union scale to the employees of my dairy. For the work we are doing we paid $45.00 a week. I paid all a flat salary, to all of them. All the inside work seems to be more than the union scale, and routes, sales, because our routes are not very large. I think all of my employees get more than the union scale, as far as that goes, a little bit.

Cross-examination:

I am a member of the Employers Council; the membership of that is the dairy in Denver. I have a contract with them. I don't know much about that Employers contract. We just tore it up after this came up. I just joined the Employers Council now and didn't belong to it before. I understand that the Employers Council is an organization of dairymen for the purpose of negotiating contracts with union. No, the Employers Council is an organization of all kinds of businessmen. I joined it just the last few days. I don't remember the exact date. It was about the same time I joined the union. I was advised that it would be a good thing to belong to this Council, that it was the thing to do, and that is why I did it. I suppose, because of the difficulty I was having with the Teamsters Union, is why it came up. Mr. Coffey and this other gentleman came out and had a friendly talk with me about joining the union.

Q. And you said you would consider the matter, that you [fol. 105] had never talked with your men about the union at all?

A. Well, that was before, we never had talked about the union. I had never no occasion to.

Q. I mean before this.

A. Yes.

I knew there was a picket on at Beach's. Yes, I know Mr. Beach and I knew his place was non-union. We never had any conversation together that I can recall any time for quite a long time. We know one another, being in the same line of business.

I called Mr. Moore in the evening when these men had been talking to me. Mr. Moore controls, I might say, all the milk market, so we naturally feel we have to see Mr. Moore. I didn't ask him anything particular, but I told him the union had been after me for signing up and Mr. Moore didn't think I ought to sign up. He told me that on the phone. That is the only time since this happened that I talked to Mr. Moore. I think maybe the reason Mr. Moore told me I oughtn't to sign it, I think it was this way, that all of the milk comes off the farms and the farmers don't want to be signed up. In a way I am a farmer too. Mr. Moore told us we could get milk into the plant otherwise, without the union. I would not say he didn't tell me not to sign it, but he told me we could get the milk without signing it, that is without union haulers. He meant we could get the milk into the dairy with non-union haulers. [fol. 106] I wouldn't say for sure that this conversation was on the same day that Mr. Coffey and Mr. Christol came to see me, it was when Mr. Coffey first called me on the phone. This was about three days before the contract was submitted to me. When it was submitted to me I believe I said I had not made up my mind, as it was that I didn't know anything about the union; I never had anything to do with the union. In my own thinking and sound mind I didn't think I had signed with the union.

Q. But you considered Mr. Moore, who controls the milk, that he advised you not to join the union?

A. That wasn't all there was about it, I have never been for the union.

Q. I understand, you never have and you are not now?

A. Well, I was signed up now.

Q. Well, you say you were, but you wanted union bricklayers to work for you?

A. It was a union contract, we had contracted that.

Q. Well, you entered into this contract freely, didn't you?

A. We did it in a free way.

Q. But you did want a union contractor?

A. Yes, he was a contractor over a year ago.

Q. And you wanted a union man?

A. I didn't particularly care; he was a union man, union contractors.

[fol. 107] After Mr. Coffey came there, I talked with my dairy men. I did tell them "I would be forced to sign and you boys cannot be leaving me at this time. I want you to be signed too if I got to be signed." So some of them said they would and some said they wouldn't. I did the talking, so I believe they all signed up. None of them had quit me yet on account of that, it isn't in effect yet. It will not be in effect until October 1st. The bricklayers are all back on the job now. Mr. Coffey, Mr. Christol and myself were there when we signed the contract at the Employers Council office. Mr. Hall was there representing the Employers Council.

At the time I talked to Mr. Moore about signing this contract, nothing especially was said about my supply of milk. It was just a short talk. I think I called Mr. Moore, being he has been seeing to us getting milk since we signed with Mr. Moore's office. Mr. Moore had control of our supply. That is Mr. Moore. As far as I know he had nothing to do with the union. Naturally I would call Mr. Moore. That is where we have to call if we are going to get milk.

Q. Were you afraid if you joined the union that would interfere with your supply—did you have that in your mind?

A. That would not necessarily be it, but it could be so.

Q. That is the reason you called Mr. Moore?

[fol. 108] A. Oh, Mr. Moore and myself have had dealings.

Q. I understand that, but you said this possibility of cutting your supply, which Mr. Moore controls, was one of the reasons—it could be—that you called him to get his okey.

A. That wasn't all the reason.

Q. I don't care whether it was all the reason, I know the other reason was you were against the union.

A. I wouldn't say that, I am just a little fellow——

Q. But you did mention it as one of the reasons you called Mr. Moore, you wanted to discuss with him the question of the union?

A. Naturally, I wanted Mr. Moore to know as he controls the milk market. That is one reason I called him.

Q. You naturally thought he was interested in whether or not you joined the union, isn't that so?

A. Well, there was very little said about that.

Redirect examination:

I got the same supply of milk. I signed this contract on either the 20th or 21st and have been getting my regular supply of milk since then.

[fol. 109] GRANT L. VAIL.

Direct examination:

My name is Grant L. Vail. I live in Elbert, Colorado. I am a private carrier under the Public Utlities regulations and have Permit No. A-72 and C-11082. I am here under subpoena.

I pick up milk in about a ten-mile radius of Elbert. I have the exclusive permit to pick up the milk in that area for delivery to Denver. I get milk from thirteen farmer-producers in that area and I bring in about forty ten-gallon cans this time of the year. I deliver milk to Stearns Dairy, Farmers Dairy League, Windsor and Beach. I think the Farmers Dairy League and Stearns are just outside of Denver.

I cannot recall just what day I had conference with the union men in regard to joining the union, but it was very nearly every day up to the 8th of September. I am under subpoena here. I think that is my signature on the back of Plaintiff's Exhibit K, and I signed it on September 8th. I do not bring in any of my own milk, I haven't any. The last conversation I had with the union men was on September 8th, at the Farmers Dairy League, outside of

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Denver. The man I talked to was Dinsmore. I backed up to unload and these two men hailed me, told me they were from the union, which I knew. And they said they wanted [fol. 110] me to join up with the union and I told them I didn't believe in the union because if I joined the union it would cut off one-fourth of my load of milk because the Farmers Dairy League isn't first grade, and it is one-fourth of my load. I also told them when they were around in 1938 or 1939 that owners of dairies were exempt and I didn't see how they could change their charter over night, but they said that was the case, that I had to belong or that I couldn't unload at union creameries. I operate one truck and drive it myself. I have no employees. I drive every day in the week. They said, "You might just as well sign up," he said most of them had signed up. I asked if Carlson and Litherland had signed up, that is Ralph Litherland. I asked if Litherland and Carlson had signed up and he said they had. I said, "If that is the case, they must be about all signed up, so I will just give you dues for one month." Because these two men had signed up, I signed up. Like I told them, I would give them dues for one month and if that wasn't the case I probably would not be renewing the next month. They didn't tell me that the by-laws required that I attend meetings once a month. I live sixty-two miles from the depot in Denver. I couldn't come to meetings in Denver; I don't get home and get my supper until about 9 o'clock every night.

[fol. 111] Cross-examination:

One-fourth of my haul goes to the Farmers Dairy League. That is located at East Virginia and Colorado Boulevard, just out of the city limits. That milk is not Grade A milk and could not come to Denver. It is forbidden by the health authorities. The remaining three-fourths of my haul is delivered to Stearns, Beatrice and Beach. Two of these firms are union firms and the other is not. I told them that being a hauler without employees I was not required to join the union. That was the case before when they were out. I said if Carlson and Litherland had joined, I might just as well join too. This conversation was friendly. I also told them I could not join, that if I did join I couldn't deliver milk to the Farmers Dairy League as that is a non-union creamery.

Q. A non-union creamery wouldn't take milk from a union hauler?

A. That is the way they have been stopping them.

Q. You say a non-union creamery doesn't take milk from a union hauler?

A. That is the way it has been at Beach's.

Beach's is a non-union creamery and they wouldn't take milk from a union hauler. This is according to your own pickets. This was so when there was a milk shortage in Denver.

I know Mr. Moore. I don't know whether it was Mr. [fol. 112] Moore's instructions that non-union creameries couldn't take milk from union haulers.

Q. That is what you said about Farmers League. Farmers League is non-union and you said you couldn't deliver to them because you would be union and they are non-union?

A. That is right.

Up to this controversy I was delivering milk to non-union creameries for the union creameries wouldn't accept my milk.

Q. Didn't you do business with them before this came up?

A. Yes. Not before the pickets got there, it was O.K. to unload.

I have been doing business with Beatrice and Stearns about twenty-eight years. They took my milk because I wasn't a union driver.

Q. I know, but they are union now and have been for sometime.

A. Beach is not union.

Q. I know that, but I am talking about Stearns and Beatrice.

A. Yes.

They took my milk up to the time the pickets got there. I know of my own knowledge that the non-union dairies would not take union drivers' milk. I gave them $3.00 dues, it wasn't for an application. I didn't look to see what I signed, but I guess I signed an application because this is my signature on here. I signed conditionally. I wanted [fol. 113] to find out whether these fellows were telling the truth. I don't know whether Carlson did sign up. Carlson said Litherland didn't join either. That is what Carlson told me. I don't know whether I have to continue in the union. It may be I have to join the union, I don't know. That is what I am trying to find out.

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Q. One man will tell you you don't and one man will tell you you do?

A. There is bound to be an outcome some day.

I didn't talk with Mr. Moore about joining the union.

Q. But you want to find out whether you have to or not?

A. That is what this court is for, isn't it?

Q. Do the shippers—up there in your area you have thirteen producers. Do they tell you where to deliver the milk?

A. Yes, sir.

Most of my milk, outside of the one-fourth left at the Farmers League, is delivered to union dairies and that milk is eligible to come to Denver. I don't dare join the union if I don't dare unload at non-union creameries, such as Farmers League and Beach.

Q. In other words, if you though you could deliver to these two people you would join the union?

A. The $3.00 wouldn't make any difference. I am looking [fol. 114] out for my own interests.

Q. I understand that, and you should be. Everybody should, and that is what these fellows are doing. The fact is, if you could deliver milk to Beach, a non-union dairy, you would be willing to join the union, the $3.00 don't amount of anything?

A. Anybody could afford three dollars if we have to.

Q. I mean, it is a good business proposition?

A. If I had to join the union I couldn't deliver to them.

Q. I understand the reason you told me you do not know about joining the union is this difficulty of delivering milk to Beach, a non-union dairy.

A. No, mostly to the Dairy Farmers League.

Q. And Beach?

A. Yes. Without Farmers Dairy League I am out completely.

Q. All right. Do you know whether they are a member of the farmers-producers?

A. No, they are not—I don't think so.

Redirect examination.

Q. What have the union people told you you could not do about delivering to non-union dairies if you joined the union?

A. There was a picket line at Beach's, they wouldn't let me unload.

[fol. 115] This was after I joined the union. There was no picket line at the Farmers League Dairy. If there had been I would have had to run the picket line. The Farmers League was not preventing me from unloading milk but it was the pickets the union had there.

Recross-examination:

The picket line was put on Beach just recently. Before that they were a non-union dairy and I could deliver milk to them.

Q. Do you know whether union men delivered milk there before that?

A. I don't know just what day.

Redirect examination:

I took the milk that should have gone to Beach and which the pickets wouldn't let me unload to Windsor.

Lenus Alm.

Direct examination:

Plaintiff's Exhibit L was handed the witness.

I have prepared a statement of the amount of pay in my dairy compared with the union scale. Lawrence Wall does bottle washing and the union scale for that is $36.40. I pay $45.00 a week, eight hours a day. Arnold Thomas is a separator, sterilizer and tester. I pay him $55.00. The union scale is $39.00. I pay all the other men at my plant $45.00 for an eight-hour day.

[fol. 116] Cross-examination:

I know that the union contract has a scale of wages and that is a minimum scale of wages. You can pay over but you can't pay less. I understand that I am not violating the union contract by paying more. I will pay these two men their present wage as long as times are as they are.

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RALPH LITHERLAND.

Direct examination:

My name is Ralph Litherland and I live at Elizabeth, Colorado. I have not joined the union. I think I am the same Mr. Litherland that Mr. Vail referred to in his testimony. I am the only one that can operate in my territory as a hauler. I am a common carrier. My area covers about a fifteen-mile "radius" around Kiowa, Colorado. The truck line used to be in Kiowa and I live in Elizabeth. I have twenty-one shippers, I believe. I bring in about sixty cans a day, that would be about 600 gallons. I deliver to the Supreme, Beatrice and Carlson-Frink Company. The farmers tell me what dairies to deliver to, that is my shippers.

There were four or five days since September 2nd, when the union activity began that I didn't deliver any milk. The Supreme got it most of the time, sometimes under protest, and sometimes they let me go in, the union did. They had it picketed but they let me go in. They had pickets at [fol. 117] Windsor and I never did go to Carlson-Frink, during the past few weeks. I didn't go because I first delivered to Supreme and they told me they had the other places picketed too. I was stopped at Supreme. I had no conversation with the union men but they wouldn't dump the milk. I unload the milk myself at these dairies.

Cross-examination:

The union men wouldn't handle the milk. They didn't stop me physically. No one offered any violence or made threats of violence. Mr. Moore told me one day, that is all, where to deliver the milk. That was the second day after they threw a picket up around the union creameries. There was no one there with a sign on but the union workers wouldn't handle the non-union milk.

Q. Now coming to the time Mr. Moore talked to you—you just said there was one time.

A. I didn't know what to do with it.

Q. And you called Mr. Moore. Where did you try to take that? You said you didn't know what to do with the milk.

A. Yes.

Q. The reason was because these people wouldn't take it?

A. They were picketed and if I went there they wouldn't let me in.

Mr. Moore told me to take it to Silver State and I did. I called him up because most of the dairymen belong to the [fol. 118] Milk Producers Association. I have been taking milk to Carlson-Frink lately. I went back on my regular schedule.

Q. Beatrice?

A. Yes, sir.

I never talked with Mr. Moore before, concerning milk. He is head of this association.

Redirect examination:

Q. Why did you take your milk down to the Supreme when you couldn't unload it at the other plants?

A. I don't know, because I would call them up, they were short, just to get to unload it. They told me the union would let me in and I don't know why.

KELVIN F. HAMMOND.

Direct examination:

My name is Kelvin F. Hammond; I am manager of the Piggly Wiggly store at 4408 Yates, in Denver. I have been contacted by union representatives in the last few weeks with reference to this union activity. That was about last Tuesday, I think, two of the union men called. I think one name is Lindsey. They introduced themselves to me. I don't think they are in the court room. He said they were having trouble with Mr. Beach on the milk deal and wanted to know if I would call Mr. Beach and ask him to sign the contract. I didn't call him. That was all that was said. [fol. 119] Nobody talked to me again. They called my partner later in the week but they didn't have any further conversation with me. There wasn't any reference to the milk, there was with reference to unionizing my store. Mr. Case was there and I told Mr. Maxwell, this was either Wednesday or Thursday of last week, it was Thursday, the 20th, I wasn't ready to sign any grocery union contract. Mr. Maxwell is the head of the clerks union and he had a contract to sign for the grocery union. He said, "Well, I think you should." I said, "I am not ready now," and he said, "All the Piggly Wiggly stores are union except you."

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I said, "Well, I guess I am just the black member, possibly I will, but I would sooner not right now." That is the only conversation we had except when the Teamsters Union called my partner last Thursday, I think it was. That is the only conversation we have had. I didn't overhear that conversation, he told me about it. I didn't get in on the phone conversation.' I couldn't say for sure whether any union men appeared at my store on Friday, September 21st, because I wasn't there. There were no pickets at our store that I know of. Beach is our main supply of milk. We would have Carlson-Frink and Meadow Gold, but Beach is the main supply. I would say they furnish 75% of our supply. That is around 24 half-gallons, about 24 quarts, plus cream, we get this every day. I would not know of any [fol. 120] other supply if Beach was cut off. For the past month and a half or two months, I would say, Meadow Gold and Carlson-Frink have skipped me, because they didn't have the milk to put out. That would have shorted us if Mr. Beach was cut off.

Cross-examination:

I have a butcher shop and grocery store, a Piggly Wiggly combination. The butcher shop is unionized and the grocery is not. There is one man in the butcher shop. On the grocery side there are three.

Q. And these gentlemen came up in a friendly way and said, "You have a butcher union, you ought to have a grocery union, too?"

A. No, they didn't put it that way. They just wanted me to unionize the grocery.

They said all the Piggly Wiggly stores were unionized, but I said I wasn't ready. It was a friendly conversation. There was no harm in these men asking me to join the union.

Redirect examination:

I am here under subpoena.

JOE LOMBARDI.

Direct examination:

My name is Joe Lombardi. I am manager of the Piggly Wiggly store at 2311 Federal Blvd., in Denver. I have been contacted in the last few weeks by union representatives

[fol. 121] with reference to the union activities here. I believe it was last Thursday. Two fellows from the Teamsters Union contacted me. I don't recognized them here in the court room. They told me their names but I did not pay much attention; I was busy. They told me they were having some trouble with Beach's creamery and if it wasn't settled that day or that following day there would be a picket line on my store if I didn't take the milk out. I said I would have it out, because my store is a union store. I had no other conversation with them. I was not picketed the following morning. I would say I get 50 half gallons, maybe better than 50 quarts a day from Beach. I had a supplier that I took from, other than Beach, but not a big supplier. Beach supplies 95% of it. I am here under subpoena.

My store is a union store. If Beach milk had been cut off my other source of supply would not be enough to run the store. I will say I could have got milk but not through Beach's. We would have had some, which we would not be able to open the store on if I had to open for that. I made no attempt to get milk any other place but I would have the next morning.

Q. Did you tell Mr. Beach the morning of the 21st not to deliver any Beach milk to your store?

A. Well, I tell you this, the deal on that, I have a partner.

[fol. 122] I don't know whether they left milk the following day, but my partner did something on that.

My partner's name is Sam Calveresi.

Cross-examination:

The conversation with these two men was friendly. The only threat was if I had the milk in there any day following that day, there would have been a picket line. There was no disturbance and no picket line there. That one day I don't think Beach left milk there. I had a little milk after that, but it wasn't delivered by Beach the following day. I had the regular supply after that. There was no interference of any kind and no picket line. My store is a union store; I have eight employees, both butchers and clerks. They are all union and display union buttons. I display a union card in my store.

Q. And the reason you display that union card and the employees have union buttons is to attract union trade

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and people who are favorable to the union; isn't that correct?

A. Well, yes, because I am one myself—not to attract trade, but because we are union men.

I am a union man and want the patronage of people who believe in the union.

Redirect examination:

Q. You put those up there so those who do not believe in union principles will not trade there?

[fol. 123] A. No, sir.

Q. You put it there because the union requires you to, isn't that right?

A. That is right.

Recross-examination.

Objection to question sustained and stricken.

E. DWIGHT MONTGOMERY.

Direct examination:

My name is E. Dwight Montgomery; I am owner and manager of a Piggly Wiggly store at 44th and Zuni, in Denver. It is a union store. During this period of union activities, I have been contacted by union men three times. The first time they called me, I think it was last Tuesday, and asked me to call Beach. This was the 18th. They asked me to call Beach and ask to talk to Leonard and ask him to join the union. Mr. Coffey talked to me that day. He called me on the telephone. I said sure I would, because I wanted to get along with the union. I called Mr. Beach and told Leonard the union had asked me to call him and ask him to join the union. That was all our conversation. On Wednesday of the same week, which would be the 19th, it was either the 19th or 20th, I believe it was Thursday—two representatives came to see me. One was Mr. Coffey and the other was the man with the green tie, I think it was [fol. 124] Mr. Christol. The fact of the matter is they told me if I didn't quit handling Beach milk for one day, that day, that they would picket my store. I said quite a lot about that. I didn't like it. I merely said I didn't like their

principle, although I was a union store, of coming to my place and telling me how to run my business and going to picket my store just to force somebody else to join the union. It was a hardship on me because I was unable to get milk. They just said they didn't want to talk about that. Nothing further was said. I think that was all the conversations that I had with the representatives of the union. They called me the one time and the next day they were out.

My store is a union store; I have three employees on the grocery side and the meat market is union, although that is run by another fellow. In other words, there are five. We take our milk from Beach. We get approximately 60 half gallons and around 36 to 48 quarts, something like that, and then about a dozen cream. I have no other supplier. I made no attempt to get milk elsewhere. I know of no other source of supply, milk was short at that time, as you know. I am here under subpoena.

No cross-examination.

[fol. 125] WILLIAM WHITE, witness for the plaintiffs:

Direct examination:

I am William White, manager of Piggly Wiggly No. 16 located at 1211 East Alameda, Denver, Colorado, and on the 20th of September I had a conversation with Mr. Dinsmore, a representative of a union. The substance of the conversation had in my office was he stated he was a member of the union and he was having a little trouble with the Beach Milk Company and he wanted to know how I felt about the union. I told him I thought they were fine, so he says, "I am telling you now if you accept milk from the Beach Milk Company tomorrow they will slap a picket in front of your store." My store is a non-union store. I replied: "Just a minute, I will call Mr. Lambotte and tell him," and I did. I told Mr. Lambotte what this gentleman had told me and Mr. Lambotte said he was under the impression it would be straightened out. Other than saying he was glad to meet me, that was all the conversation I had with Mr. Dinsmore. I am not positive that he told me what union he represented. I believe he said the Teamsters

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Union. He said if I accepted milk from Beach there would be a picket placed in front of our store on Friday. Pickets were not placed in front of my store on Friday. Mr. Lam- [fol. 126] botte told me Thursday when I called him to go ahead and accept milk as I had been unless I heard from him. He told me to accept the Beach milk if it came. I believe this was in the morning that he told me. Most of our milk for my store I obtained from the Beach Milk Company. Meadow Gold supplies some milk. The proportion from Beach is about three to one from Meadow Gold. I had no other source of milk supply in case I couldn't get the Beach milk.

No cross-examination.

LINTON C. AUSTIN.

Direct examination:

I am Linton C. Austin. My brother F. H. Austin and I are common carriers and operate under Public Utility License 375 and 1632. My place of business is between 27th and 28th Streets on Spruce in Boulder, Colorado. We have been common carriers since 1929. As common carriers we operate in the territory beginning on the Larimer County Line along the foothills, east to the Weld County Line, south approximately to Longmont, Colo., a line due east of Longmont, then it drops along what is known as the Fredericks Road, along the Denver-Longmont highway, south. Roughly speaking, this is to Colfax running east and west to Golden and along the foothills north to the Larimer County line. Most of this area is exclusive to us. We overlap along the Longmont pavement road north as far as we [fol. 127] go to the Larimer County line, and we also overlap dropping south around Broomfield, Arvada and Golden. That is the eastern part of our permits. Then we are overlapped in the southern part, two and a half miles south of Longmont, I think by Pioneer, then from Longmont east we are overlapped by Lang and Borgmann. We overlap with Pioneer on the southern part of our territory. They overlap us from the Longmont pavement as far west as Boulder and I think as far south as Golden. We are the carrier for Harold Hennigh, E. W. Johnson, O. T. Holland

and Eston Buster. They are in our exclusive territory, and we are the only carrier available for them under the Public Utilities regulations.

We employ nine drivers and we have nine trucks. Those trucks are employed exclusively as carriers of milk. As to the number of ten-gallon cans we can carry, we carry 120 on some of the trucks and 160 on others, and we average around 600 cans a day normally. I know how the wages of my employees compare with the wages of union carriers. We pay different drivers different wages, depending upon the amount of work done. Our lowest paid regular driver is $170.00 a month, but we pay $85.00 every fifteen days. Our highest paid driver is $99.40 every two weeks, of which we have several, and they can average from six to seven hours a day work. I know from comparative figures of the [fol. 128] union drivers' checks on comparable work some get less than my highest paid drivers. Our lowest paid drivers work from Boulder. They go out with the truck and pick up milk through the rural part of the country and deliver milk into Boulder and Denver, or other points we have either to deliver to that — happen to demand it.

None of my employees have stated to me that they wanted to join the union. I have at no time stated I didn't want them to join the union. I have not taken any position with them as to whether or not they should join the union; I left it entirely to their discretion. They have stated to me they would not join the union, and some of them have stated they would quit before they would join. Gene Anderson, Lester Helburg and Lee Helburg have made that statement, "that they would quit before they would join." I did not call them in and ask them that, they just said that of their own free will. My drivers live generally at and around Boulder. Two drivers live in Niwot. There never has been any collective bargaining in any form among my men. It would be inconvenient for some of my men to come to Denver once a month for a meeting, and for some of them it would be almost impossible. I had a conversation with Walter C. Moore, of the Denver Milk Producers, Inc. and Mr. Bullard of the Pioneer Trucking Company on the first Saturday in September in Mr. Moore's office. In regard to what was [fol. 129] said to me and the Pioneer handling each others shippers, Mr. Moore told us that he would like for neither one of us to solicit each others shippers during this period — emergency. I said I would not and Mr. Bullard said he

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would not. I get to my garage about 6:35 or 6:40 in the morning, and I park eight trucks normally in our garage. We keep part in the yard in the summer time. One of my drivers lives at Niwot. One that lives in Niwot picks up milk that goes to Boulder. He just delivers milk to Boulder and the others pick up, I think, altogether Denver milk. We just change the routes as we have to. Niwot is twelve miles from Boulder.

When I got to the garage that morning, I found my drivers, except the two that live in Niwot, didn't know what to do. They were waiting for my brother and I to get there and tell them what to do. We found several cars parked around the four squares of our garage. As to how many cars I found there at the garage, on the Spruce Street side there four cars. I can't tell you what kind of cars they were. They were all Denver licenses and all were passenger cars except one, which was a station wagon. As to how many men there were in those cars, no car had less than two and from that up to six, or possibly more. The station wagon had five or six in it. There were three other cars on the Pine Street side of our garage. One coupe [fol. 130] had two men in it and two or more in each of the other cars. On the 28th Street side of our garage there were two cars with two men in them. On the 27th Street side, there was one car and it was a Plymouth with two people in it. As to whether I recognize any of those drivers in there, not definitely, but I think this man (indicating the man in the brown suit on the right hand side, identified as Mr. Pixler) was one of them. As to whether I found other cars around there, there were two parked on 28th and Arapahoe. I don't absolutely know they were pickets; they had Denver licenses. That is all the cars I know of personally. The boys said they picked up other cars. There were two cars in Niwot that I didn't mention, parked where our two drivers live there. As to what were the men doing in the cars, when I got there (referring to the garage) it was between 6:30 and a quarter to 7. There was nobody outside of the cars; they were just in the cars sitting waiting, I don't know what for, but just in the cars waiting. I told the drivers to go ahead and run the routes just as usual and we would try to watch as much as we could and see that nothing happened. My brother had called the police, and they came down and they talked to the boys in the cars. I wasn't there when the police talked to them.

The police told me what the men told them. Then I called [fol. 131] the sheriff's office and asked them if they couldn't get some men ready to go out and follow our drivers. We didn't know what was going to happen. We were worried with all those cars around. They had all taken off after our trucks, and we were afraid our men might get out in the country and have some trouble. We didn't know what might happen, so my brother took a car and followed one of the trucks and I started following another, and I came back because the one that was following the truck lost the truck. I feared violence. There was no reason that we knew of for them to be following our trucks if they didn't have something in mind to do. You know, we have heard in the past of violence right here in Denver and things happening to drivers and trucks by the same organization. I had only one driver to a truck. We fan out our drivers from the point of beginning and try to cover the territory with as little overlapping of each vehicle as possible, and they go down the country roads into the farm yards or lanes and pick up the milk at the dairy milk houses, then come back to the road and go to the next stop. They get on a good many roads where traffic is very light. The drivers unload milk on the docks by pulling into the creamery wherever the milk is supposed to go and either roll it off on the dock where they dump it into the receiving vats or on the roller [fol. 132] conveyors that carry it up on the dumping vat and then they wait for the empty cans to came back washed or go on and unload their next stop and pick up the empty cans later.

As to who selects the dairies to whom milk is to be delivered, the farmer usually tells us where to take it. When milk is needed at one dairy more than another, then Mr. Moore tells us where to take it, which occurs occasionally. During this disturbance when I couldn't deliver to union dairies, Mr. Moore gave me different instructions. He gave us a list. We were given to Wednesday, September 5, when our drivers were to sign up. I contacted Mr. Moore and asked him what should we do with this milk if we were not allowed to unload it at union plants, so this list told me how to distribute the milk.

Q. Who gave you until Wednesday to sign up?

A. No one told me anything about that, but whoever it was talked to our drivers and told all of them that they would have until Wednesday to sign up.

That information I got from my drivers. No union representative ever came to me and talked to me about joining the union. None of them "broached" me. I wouldn't have known they wanted us to join only that my drivers told me about it. I would have talked to them if they had come to see me. My position about the union is that if my men want [fol. 133] to join the union that is their business. I have no reason to tell them they can't. If they want to join, they will, and if they don't want to join, they won't. I do not intend to coerce them to join.

I come in person with one of my trucks as the occasion demands, and I was in Denver several different times, almost all the time during this period. The first I saw of any pickets was on Sunday, September 2, at the Windsor Farm Dairy. I went to unload one of my trucks that had been there, and I had one shipper to leave and there was a picket there. As I saw the picket, I didn't unload, and I took the milk to another place. I had been told I could not unload by my driver, so I took the milk to the New Reliable Dairy. The only two other times I had any contact with the union was at Beach Milk Company. That was a non-union plant and they had placed a picket there and the driver who had been driving that route was sick and I had to drive it. The first day I drove in there and backed up—you have to back in to the unloading dock from the 22nd Street side of the plant. I backed up to get in and had to let the tail gate down. This picket came up and said, "You are a new driver, aren't you?" I said, "No, not a new driver." He said, "Where is the boy that ordinarily drives this truck?" I said, "He is sick." He didn't ask me my name, he asked how about joining the union. I said, "No, I am not interested." He told me he thought I should, it [fol. 134] would be better for all of us if we would eventually. I don't remember the exact text of the conversation. I was in a hurry to unload. The next day was about the same thing. After that he didn't bother me any more. That is the only union men that ever spoke to me about joining the union and is all the contact I had with the union. As the result of the picketing of non-union dairies, we had to divert some milk. The purpose of diverting the milk instead of taking it back to the farmer was to keep it from spoiling. Milk is very perishable, and we always try to have it off our hands inside of three hours because

if it is held much longer than that in the summer time it will spoil. The farmer is paid a bonus if it makes a Grade 1 or Grade A requirement, and we try to get rid of it in at least three hours from the time we pick it up. As to the testimony of Harold Hall of Brookridge about sour milk reaching his plant in the afternoon, it is true that some of my men hauled the milk consigned to Brookridge from the Beatrice Creamery to the Brookridge Dairy. As to the explanation for the milk souring, that milk doesn't go to Brookridge directly. We have a truck that picks it up, goes to the Windsor and there he meets their trucks and their trucks that haul milk into town pick up that milk and some more of our milk and some milk that goes to Royal Crest, makes these stops, and goes out to Brookridge with [fol. 135] this milk. This milk that was sour was part of that load. Ordinarily that would be delivered to Royal Crest at 11 o'clock and picked up between 11 and 12 by this pick-up truck. The pick-up truck was told he couldn't deliver to Brookridge. He was trying to call us to find out what to do with it, and he couldn't contact us. Consequently that milk was not picked up by Mr. Hall until 4 o'clock. My shippers have complained to me about my not delivering milk to places where they wished it to go. Part of our shippers have been very, very discouraged over where the milk has been going, because they have not known where it was going, and we have had several shippers tell us not to take their milk to a plant if it was union. Well, different other shippers have told us if we signed the union contract not to drive in their yard, they would not have anything to do with the union, and they wouldn't turn over any milk to me.

As to what became of the cars around the garage, when my trucks started out on their routes that morning one car to two cars pulled out behind each truck of ours and started following the truck. That is from the number of cars I saw there, one to two followed each of my trucks. As a result of that, all during this time we have been afraid to leave our trucks in the garage, because if anything happened to the garage, and I will tell you what we have been afraid of [fol. 136] —we have been afraid some one would set fire to our garage and burn the trucks. So we have left the trucks at the first pick-up with the farmer and each driver drives out and gets his truck there, and we have been put out a whole lot. It is inconvenient to operate that way.

Cross-examination:

I have not discussed with my men about joining the union. I did not discuss it with them either before or after the men came *came* up in the cars. Our shop pays more than the union scale calls for. As to where I got the union scale, I know several drivers who haul milk and do back hauling of freight who belong to your organization, and I got the information from them. I did not tell my men that they got more than the union scale. As to whether there was a controversy between the union haulers and non-union haulers, I knew there was something going on. Mr. Bullard has become a union hauler. Recently at the time of the difficulty, your question is not right that he was union and I was non-union. He joined the union the day before we were at Mr. Moore's place. He (Mr. Bullard) has always been a competitor of mine. I didn't say that there was no contact by my men with any of the union representatives about my men joining; my men were asked to join the union. I know that because the men said so. Upon being told that they were asked to join the union, I did not tell them that [fol. 137] there was no use of joining the union as they got more than the scale. It was discussed as to them joining the union; I heard them discussing it. I heard my men say that the union scale was less than wages I was paying. I knew they were trying to unionize my men, and I knew they knew about the union scale, and they were getting higher wages from me, but I never mentioned that to them at any time. I didn't have to compare their wages with the union; they knew it. If a man is getting more in a non-union shop than in a union shop, he isn't going to join the union.

Q. In other words, your idea is the union stands for lower wages than a non-union place?

A. I didn't say what they stand for.

I know it is true that it is to my men's advantage to work for a non-union place. I didn't have to tell my men that; they know it themselves.

As to how I got to Mr. Moore on September 1, I called him. I called him because we were given until Wednesday to sign up, or else. My men told me that. I went to Mr. Moore's office after driving a truck into Denver that day. I went there because Wednesday was getting close and I had to know what I should do with the milk; I wanted to know ahead of time. I knew that we couldn't de-

liver milk to non-union places if your fellows stopped us. I went to Mr. Moore for the purpose of having him tell [fol. 138] me where to divert the milk, and he told me. As to how Mr. Bullard got into the conference, I believe Mr. Moore called him in at my suggestion. I was there first. He came in later and then we were both there at the same time, and Mr. Moore said he didn't want us to solicit each others business. When I got there before Mr. Bullard got there, I asked Mr. Moore what I should do with the milk. I think Mr. Moore either called Bullard or "Blackie" just came in. I don't know what Bullard was up there for. I know what I was there for. I testified Mr. Moore told me and told him not to solicit each others customers. Yes, Bullard was there for that purpose. As to the first thing that was said by me or by Mr. Moore, I asked Mr. Moore in case we were stopped from unloading at the union plants on this Wednesday what should we do with this milk. Mr. Moore told me and gave me a list of creameries where to deliver the milk in case we were stopped. At that time Mr. Bullard was not there. The next thing that was said I told Mr. Moore that I knew Pioneer had signed up with the union and I was pretty sure there was some milk they (referring to Pioneer) would be trying to haul that we were hauling. I think Mr. Bullard was there at that time. I think that is right that I was telling Mr. Moore that Bullard, the union hauler, was going to try to get some milk I was hauling, and then Mr. Moore told both Bullard and my- [fol. 139] self during this time of trouble he would rather we would not solicit each others milk and got us to promise we would not, and we both promised him. I was not soliciting any milk from his shippers, but I thought he was soliciting some milk from mine. It is not a fact that Mr. Moore said to Bullard, "Now, don't you get any of this milk Austin is taking, or I will fight you." I am sure that remark was not made. I didn't say that Mr. Bullard simply said he wouldn't do that; I said he promised and I promised.

I said only one union man ever asked me to join the union. This man who asked me to join the union didn't know who I was. This man asked me where the driver was and I told him he was sick. I certainly think I should have been contacted about the union and discussed it. As to whether I wouldn't have joined anyway, I couldn't join unless my men joined. I think I should have known some-

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thing about it in advance. I wouldn't have joined unless there was a good reason.

At the time we had the conference at Mr. Moore's office there, milk was being accepted by union dairies. I was up at Mr. Moore's for the purpose of finding out what to do with the milk the union dairies wouldn't take. I didn't know for sure whether my milk was not being accepted; I knew we had been told we had until Wednesday to sign, or else. I found out the milk was not being accepted on the 2nd, but I didn't know the 1st. As to what I knew about the [fol. 140] union hauler's milk could be delivered to both union or non-union dairies, I didn't know anything about it. I didn't know as much about my competitor's business as he did. I knew who some of his customers were. I didn't know Mr. Bullard could deliver his milk to both union and non-union dairies. I know he cannot or has not the authority. Beach has been short of milk a long time. I knew he was getting all the milk I used to take to Carlson-Frink and Beatrice. I was delivering milk to him all the time. As to whether it was milk originally going to Carlson-Frink, I will give you that definitely. We were giving Beach the milk that had been going to the Windsor Farm Dairy. Beach doesn't get much milk from the union dairies. I won't state definitely what Mr. Moore's duties are. I will just state what I think they are. I think I said in my direct examination that Mr. Moore places the milk where it is most needed. He didn't replace any milk for Brookridge on our trucks. I heard the testimony that Brookridge was short, and I heard the testimony that Carlson-Frink was short, and if you take milk from Carlson-Frink and put it at Brookridge, then Carlson-Frink was short. As to this milk that I was hauling, that would make some other creameries short. All this milk comes to Denver, whether Mr. Bullard hauls it or I haul it. Certainly, I say there was a general shortage. You take it away from one creamery and give it to another, that makes the first [fol. 141] creamery short. It is a matter of distribution. As to the shortage, the shortage was not due to natural causes, it was due to union pickets not letting us unload at union plants. The union plants were the ones that were hurt mostly by the shortage. Mr. Moore asked both of us not to solicit each others shippers. I said I would not and he said he would not. The milk was short at the union dairies, but as far as the city is concerned there was no

difference. I say that the union dairies so far as we were concerned were the ones most hurt in this deal. This man was not told not to compete with me as a union hauler. We were both asked not to solicit each others shippers. He did not comply with this. He got about twenty cans of milk that I would have gotten if he had stuck to his promise; I mean about twenty cans a day. As far as I know, the milk went where there was a shortage because he could deliver to union dairies. All dairies were short, I did not say that the particular shortage was in the union dairies; I said they were hurt the most. The reason we lost these two shippers was because of enmity to the Producers. I said it is right that the milk that I lost was taken by him and delivered to union dairies. If I had hauled the milk which I lost, it would not have reached the union dairies.

Redirect examination:

The names of the shippers I lost are Stearns and Hender-
[fol. 142] son. Mr. Hillmeyer is the owner, I think, in most cases, and those two transferred to Pioneer as a result of this trouble and that was about twenty cans a day. It has not come back since that time. Mr. Hillmeyer's milk went to his dairy at all times. First I hauled it to Stearns until the disturbance arose, and then Mr. Hillmeyer himself hauled it a week himself to his own dairy, and after that Blackie hauled it, so at all times that milk went to the Stearns Dairy.

Recross-examination:

The Stearns Dairy was a union dairy in Denver. I don't think they were hurt as much as some of the other dairies. If I had hauled the milk, it would not have gone to Stearns because the union wouldn't let us deliver it.

LLOYD MOORE.

Direct examination:

I am Lloyd Moore. I reside in Boulder. I am 37 years old. My occoupation is hauling milk. I am employed by Austin Brothers. As to other employment, I hauled a little coal on the side in the afternoons in my own truck. As to my hours a day, I work for Mr. Austin, it varies according to the routes from five hours on up.

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I have never been approached by any union representative during this period. I have never been asked by any [fol. 143] one to join the union. I have occasionally talked with some one about it, but not with any union representative.

On the morning of September 5 I was hauling milk. As to anything that happened particularly that day I don't think they would allow us to unload milk at the union plants. I was not followed by any union man that I know of. As to whether either of the Austins ever told me I had to join or did not have to join the union, they never said either way. I do not want to join the union it would be against me, wouldn't be any object to it, because I am getting more money than the union scale for the hours I am working.

No cross-examination.

VERNE CARLSON, JR.

Direct examination:

I am Verne Carlson, Jr. I am 21 years old. I am single, and live in Boulder at 1527 Walnut Street. My occupation is hauling milk for Austin's as a truck driver. I have no other employment. My hours are from five hours on up, if everything goes all right. I get back to Boulder about 12 o'clock and begin at 6:30.

As to whether I have ever been approached by any union representatives here in the last few weeks about joining the union I talked to some. I asked them what their advantages [fol. 144] were. I don't remember when I was first contacted. This conversation took place the first time at the Beach Milk Company. As to fixing the date, I imagine it was about the 12th or 13th of September. There were five men there, I don't know their names, and I asked what their advantages were and they just told me that they thought the union was a good organization, that it helped, and I told them that I didn't care for the union, and that was all that was said. I unloaded my milk. As to whether they tried to stop me, they just asked if I was going to back in and I said, "You are darn right I was." They didn't say anything then; I just backed in. As to my talking with Mr. Austin with reference to joining the union, when it first started I just told him that I would quit my job before I

would join, because I figured it was a free country and I didn't care to join the union. He didn't say one way or the other as to my joining the union.

Cross-examination:

I didn't say I had this talk with Mr. Austin before I went to war. When I got back and heard about the union trouble and I was in the service and I didn't want to belong to it. I figured it was a free country. That is right, I believe it is a free country and I don't have to work with a union man unless I want to. I also believe the union man has the same rights and does not have to work with me.

[fol. 145] Oral stipulation made by respective counsel concerning the continuance of the temporary restraining order.

JAKE ROTH.

Direct examination:

My name is Jake Roth. I live in Niwot. I am 41 years old and married. My business is hauling milk for Austin Brothers, driving a truck. I also run a little farm of about 30 acres. I have three cows on the farm. I pick up milk around Niwot and close to Longmont and Hygiene and bring it to Denver. I have been working for them twenty-one months. I leave about 7, and I generally get to the Berkeley Dairy, my first stop, around 10 o'clock, and I delivered to both union and non-union daires in Denver. On Wednesday the 5th of September when I started out from Niwot, some one followed me. Well, I got up at 6 o'clock that morning and I ate breakfast and I got ready to leave at 6:30 and I came out and I seen a gray car coming down from the east, and I came into the driveway and turned around, and I had the right-of-way. I thought it was simply going to follow me on account of their actions. I had heard about some disturbance on the union situation prior to that. There were two men in the car that followed me. I got in the truck and left and the men followed me and my wife followed them; that is she got in her car and followed them. They followed me all the way around to

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[fol. 146] every pick-up I had all the way to Denver and to all the dairies.

Q. Now, what did you think about this truck, this car, were you bothered by them following you?

A. It upset me, I was nervous and didn't know what was going to happen. I was worried, scared in a way.

In picking up my milk, as to whether I stay on the main route or go off on side lanes, a lot of it is off on the side roads. There isn't much traffic at that time of the morning on those side roads. As to how close this car kept while I was making my rounds, he kept as close as he could, I would say a quarter of a mile, sometimes closer. When I went into a farmer's driveway to get milk, the car following me would sit out at the side of the lane and wait for me to come back. I finished my deliveries in Denver. It followed me to all the stops I made in Denver. I finally lost that car when I got unloaded. On that day I did not find any pickets at any of the dairies I went to. The next day a car followed me; he picked me up at Broomfield. There was one man in the car. He followed me to all my dairies.

I was asked to join the union by a union man. It was around the latter part of August. They contacted me several times at Beatrice and Frink. They came up and asked me if I didn't want to join the union, and I told him no, that I couldn't see where I was benefitting by it, [fol. 147] and we just had a general conversation about joining the union. I couldn't see it their way. Neither of the Austins ever told me I should or should not join the union. About the last of August or the first of September, I was at the Beatrice Creamery. While I was there, Gene Anderson came in with his truck. He is also a driver for Mr. Austin. At that time as to whether there was any conversation about my having joined, they were talking to Gene and he was backing up to my truck and I got out of my cab and started around to the back end and there was one of the fellows talking to Gene and he told him, "Shorty," which meant me, "had joined up." I see Mr. Christol in the court room. He told me Gene had signed up. He said, "Did you." and I said, "No." As to what we did then, we changed our milk and that was all that was said. That covers the situation pretty well as I know it.

Cross-examination:

Certainly, the car that followed me was on the public highway, and after I got through delivering my milk they quit following me. I was not asked to join the union on that particular day; it was the next day that I was asked to join the union. The conversation was an ordinary conversation; perfectly gentlemanly on both sides, and then I said that Mr. Christol told me Anderson had joined the union, and he was standing right there and I said I had not, and that [fol. 148] was all there was to it.

FRED H. AUSTIN.

Direct examination:

I am Fred H. Austin. I live at 955 Twelfth Street in Boulder. I am the brother of Linton Austin that testified this morning, and I operate a truck line and haul milk by Public Utility license with my office in Boulder.

On the morning of September 5 I was down at my garage after I was called down. I was called at 6:25. When I got to the garage there were about four cars on Spruce Street. The men were standing around the cars talking to one another. They were outside of their cars most of the time until the trucks got ready to leave the garage. I didn't count how many men there were standing around talking, but I would say there were about seven to nine men. As to what kind of cars they were, we didn't take any look. I noticed there was a station wagon and about three automobiles on that side of the garage. As to noticing cars around the block, right straight north there is nothing on Pine Street there, except a lane, and there were about three cars on that street. As to what I did after I found these cars around there, as soon as Anderson called and said the cars were there, I went by the police station and told them they better come down there, we were afraid of violence. I [fol. 149] demanded that they come down there. The police got there right after we arrived. The police talked to the men. I was not there when they were talking to them. When our trucks went out of the garage, one or two of these cars pulled out behind the trucks. I am a licensed aviator; I do not own my own plane. I rented a plane at the Boulder airport. As soon as the cars left, I followed

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one car out. I didn't know what to expect. After we got out just north of Boulder I stopped and told the driver of the truck something, saw the station wagon coming over the brink of the hill and saw them stop about 150 yards back. I kept letting the truck gain on me, they didn't attempt to pass me at all. I think there were around three or four men in the station wagon. I kept slowing up, letting the truck go a little ahead of me. Well, anyway, we got over there ten miles north of Boulder, the truck was about three-quarters of a mile ahead of me and the union car about a quarter of a mile behind me, and by the time his had gone—they stopped at the cross roads and they didn't know where to go and they sat there until my Boulder truck got by and they decided that wasn't the truck they had been following and they were lost, and I sat by Hay Stack Mountain and watched them. So I started to find another truck and see how they were getting along, and I just happened to think I can't get around that way, so I drove back to Boulder at [fol. 150] 7:45 and I took off in the plane. As to what sort of a plane I had, it was a Piper Cub. After I took off in that plane, I went first to the Gene Anderson route east of Boulder and I watched his man trailing him, and I was flying around just high enough to be safe and low enough to see everything I could that was going on, and these fellows got to watching me so close that they got lost from their truck. As to what I found about these various cars following my trucks, I went on Jake's route and I circled around for about a half hour watching the car trailing his truck. He knew I was watching; I came over the trees and he grabbed his hat off and waved. I followed him around about a half hour and the car was just stopping at each driveway as he would go into the gate, and as he came out the truck would, lots of times, have to meet the car. He told me how nervous they made him and I told him it was too bad it wasn't a slippery day so they could slip into them. And then I came over Niwot again and I saw Jake at that time, he was at the Dodd ranch, his car was sitting out there and his wife's car was sitting out there, and at 9:25 I came back to the airport. That is an hour and forty minutes I was watching. Union cars were around our garage and at Howard's Cafe off and on until about 10 o'clock. The last union cars were around there about 9 o'clock.

[fol. 151] Cross-examination:

I mean 9 o'clock in the morning.

WALTER BORGMANN.

Direct examination:

I am Walter Borgmann. My brother's name is Carl A. Borgmann, and we operate under Public Utilities license as Borgmann Brothers. We are common carriers. We operate two trucks. I drive one of those trucks, and we hire Morris Cochell for the other one. My brother and I are also engaged in farming. Our farm is approximately ten miles east of Longmont. Our farm is 355 acres. My mother is the owner and my brother and I operate it as tenants. We have a herd of twenty-five head of milking cows, and we deliver our milk and that of other shippers. The truck that has the hired driver has twenty-two shippers and the truck I am driving serves fifteen.

Our territory is not an exclusive area. The area that we operate in starts approximately two miles south and east of Longmont and extends from there to the Platte River north approximately fifteen or twenty miles, thence west to the highway going through Loveland and back to the point of beginning at Longmont. We pick up along the Welby road coming into Denver. We conflict with Colorado Rapid, and we conflict with Lang. There are several others who [fol. 152] have very small areas and are not operating. As to how much of our area overlaps with them, that is not exclusive. There is very little exclusive territory which we are operating in. We have considerable territory that is exclusive, however, it is not being operated extensively at the present time. I presume at the present time it is about 90% that we have competition in. As to how many of the thirty-seven shippers are in exclusive territory, there are about three insofar as direct shipment to Denver is concerned. However, we have competition in that they can ship to Brighton and sell in the Denver market, both. For all practical purpose, we have competition from one end to the other.

I drive one truck and I have one man driving the other. I think the hired driver is farming a small area on his folks' place, which is in the neighborhood out there. He had a

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small garden tract, and he also operates a large garden tract on our place. His name is Maurice Cochell.

I have never told Mr. Cochell that he should or should not join the union. As to when I found union activities any place on my route in the month of September, the first evidence that I saw of union activity was when I found the Austin boys weren't loading and unloading at their regular docks. I believe that was Sunday, the 2nd of September. I ordinarily make my deliveries to Supreme, Beatrice, Carlson-Frink, Broadway and Royal Crest dairies. The [fol. 153] first three are union and the last two non-union dairies. On Sunday, September 2, when I found the Austins could not make delivery, I made regular deliveries that day. At times Mr. Moore or his representative have asked me if I knew where there could be new shippers obtained to bring into the Denver market. They were desperately in need of more milk. There has never been discrimination from them, it was regardless of whether they were association members or not, as long as they met the city health requirements, that was all that was asked. Thursday, the 6th of September, was the day which we first failed to make deliveries. My first stop is the Supreme Dairy on my truck, and I pulled around the corner and started into the driveway, and two men approached from the left-hand side of my cab and indicated they wished to talk to me and I stopped. I don't believe either of the gentlemen is here in the court. As to what was the conversation, they asked if I had a union card, and I told them I didn't, and they said I could not unload at that dock without a union card. I said, "Very well," put my truck in reverse and drove out and proceeded from there to Broadway Dairy. I didn't go to any other union dairy that day. I unloaded my truck and went to the telephone and asked Mr. Weber where I should take the milk that had been turned down, and he instructed me to take [fol. 154] the Supreme milk to Beatrice and the Royal Crest milk and Carlson was to be taken to the South Gaylord Dairy. Those were non-union dairies.

I have had several talks with Mr. Coffey. They started about the time that Colorado Rapid had their difficulty about six weeks ago, about the end of July. I talked to Mr. Coffey at Carlson-Frink. There wasn't a picket line there prior to September 6. As far as I was concerned, I was never stopped from delivering my milk. As to how Mr. Coffey happened to be there, apparently he was there

on business with plant employees and stopped to talk with us as he left the plant. That was the first talk I had with Mr. Coffey. As to where he talked to me, we were resting there in the shade and he came up and joined the group. He asked if we boys would be interested in joining the union, and I said for myself I would not be, and we discussed it for a few minutes, and it came my turn to unload and I walked off and proceeded to unload my truck. On that day I had no other conversation with Mr. Coffey, but on succeeding days we had numerous conversations. One day in particular I had a conversation with one of my farmers, one of the shippers, and asked him what I should do in case the union representatives—I was talking to Mr. Coffey, but telling him what my producer had said. My producer said if they attempted to interfere with me unloading their milk to tell them to go to hell, and Mr. [fol. 155] Coffey said if it became necessary for this man to feed his milk to his hogs for sixty or ninety days he would probably change his mind. As to whether I had any other conversation with him about the carriers joining the union, he suggested at that time that we were all going to have to join or we would just simply be unable to unload our milk in the town, that was all. As to what I said to him about that, there wasn't a good deal I could say. I had to wait for developments to see what become of that.

On Monday the 10th Mr. Joseph Green of Brighton was with me. He rode with me both the 8th and the 10th. He is a farmer-producer, owning his own herd. On the 8th Mr. Green and myself drove to the dock at Carlson-Frink, and I asked for the privilege of unloading the milk from my truck as a owner and operator. There was a union picket there, and he was talking to Mr. Greenfield, the field man, at the time. I don't know who the union picket was. I asked for the privilege of unloading this milk, and he said, "No" with a very emphatic shake of his head, and I drove off from that dock. On the 10th Mr. Green was again riding with me. There was no representative at Carlson-Frink's when I drove up and I asked the man who ordinarily dumps the milk if he was going to dump my milk that day, that is [fol. 156] the dock where I unload, and he said he would have to ask his boss, and I waited for probably fifteen or twenty minutes and Mr. Coffey and Mr. Christol came up and we were conversing with them for a few minutes and I asked again, as an owner-operator, to be allowed to put

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my milk on the dock and was rejected. They said no, without a union card it could not be done. I asked whether or not Mr. Green could unload his own milk off my truck; they requested no other milk be unloaded and so rejected me on that. They just said, "No." It was said by Mr. Coffey. We then drove off. We went to the non-union creameries and disposed of the milk.

As to what happened on Tuesday, the 11th, I saw Mr. Coffey at the Supreme Dairy. I had unloaded milk two days previously at the Supreme Dairy, and on Tuesday I asked again if they would accept the milk and the management called Mr. Coffey—I presume they called him, he appeared anyway soon after that, and he was in company with another gentleman that day, and I asked them if I could unload milk at that dock. They said no, without a union card it could not be done. I asked whether it could be unloaded at any of the downtown plants, meaning Carlson-Frink and Beatrice. So I proceeded to go to non-union plants to dispose of the milk.

James L. Johnson rode with me on Sunday, September 9. He is a milk producer and shipper on our truck from west [fol. 157] of Brighton. And we drove to the Supreme Dairy that day and there was a man sitting in a car and I assumed he was a union representative. I asked him if he was and he said he was, and we asked for the privilege of unloading milk as an owner-operator, or I did, and he replied he had no objection whatsoever, we could go ahead and unload the milk, he was merely checking. And then I asked whether or not the other truck with the hired operator could unload. He said yes, for him to come in, and we, incidentally, had to call that man clear back across town to make that delivery. From there we went to Beatrice. As to whether there were any pickets there, there were four more standing at the dock, one was Mr. Coffey and there were three other men with him. I do not know the names of the other men for certain. I asked whether or not I could unload at the Beatrice dock that day. He said no, without a union card it could not be done. I was talking to Mr. Coffey. "Well," I said, "I unloaded at Supreme and I would like to know why the discrimination." Both Supreme and Beatrice are union. He said, "For heaven's sake, why did the men allow you to do that?" I said I couldn't tell him because it wasn't my realm to know, and he asked then if I would give him a few minutes

to talk with him. There was a truck waiting behind and I drove up a ways, giving him the few minutes he requested, [fol. 158] and he wanted to know why I wouldn't join the union. I told him that there were reasons and that we were justified in not joining them. Chief among them was some customers that befriended me when I needed help were non-union and I didn't think I should let them down, practically two-thirds or three-fourths of my customers were non-union, and he said, "Borgmann," he said, "we are going to get you by hook or crook." Mr. Johnson was sitting with me all the time.

Cross-examination:

I stated I was not going to let my friends, the non-union dairies, down. They had befriended me. I stated they were principally Broadway Creamery and Royal Crest, not Beach. Evidently it was working up to the statement that if I joined the union I could not deliver to non-union creameries. It wasn't so at that time, but with an eye to the future I took that attitude. I was told by one of the representatives that would develop by a gentleman by the name of Paul. I don't know what his last name was. I had no understanding with non-union dairies. I did not ever tell them, "You have been my friends and stood by me and now I am going to stand by you." The feeling I had for them was a moral obligation to me. With respect to being unable to deliver to non-union dairies, violating my moral obligation, I knew I was sticking my neck in deeper [fol. 159] than I already had. I didn't have my neck in at all because I kept it out. It was Coffey to whom I told about my shipper telling him to go to hell. I didn't tell Coffey to go to hell; I just stated what my shipper told me to tell him, and then he gave me a message back to the shipper. The substance of it was I stated that the shipper said to tell him to go to hell and he said to tell the shipper he might change his mind in sixty or ninety days.

I called Mr. Moore's office about this extra supply of milk; it was Mr. Weber that I talked to. I called him because of the difficulty of delivering the union milk. As to what he has to do with it, it is milk, according to the contract, which the farmers have assigned to the association and it is up to them to find a market. That is the association of which Mr. Moore is the secretary. I would not know

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whether they control about 98% of the milk. I asked permission, as I put it, to leave my milk at the union dairies because I was both an owner and operator. I serve thirty-seven shippers, including our own.

LINDSEY WHITE.

Direct examination:

I am Lindsey White. I live at 5200 South Broadway in Littleton. I am a creamery worker and truck driver. I work for Brookridge Dairy and have worked approximately six years for them. I am appearing in court under subpoena.

[fol. 160] I have had occasion at various times to go after the milk of George Ellenberger in the course of my employment. I belong to the union. I have never been refused the right to haul the Ellenberger milk. I go to 845 Lincoln Street for it. It is brought there by Ellenberger. I did not have any conversation with Mr. Coffey at 845 Lincoln Street. As to conversation with any union men down there, I did not have any more than a social conversation. I never had any discussions other than social that I can remember. I went to the 845 Lincoln Street address after the Ellenberger milk, and then I went back and told Mr. Hall I could no longer haul the Ellenberger milk because it was hauled in by Mr. Ellenberger and he didn't have a union card, and the stand the unions were taking was that all persons hauling milk to town must have union cards and all union drivers picking up milk must be union drivers, must have union cards. As to whether I did not cease hauling the Ellenberger milk, I went down after it the next day, but I told Mr. Hall I would haul it one more day and then he would have to make different arrangements; and I told Mr. Liggett, who is foreman of the Brookridge drivers, that I would not be after the milk, and he asked why, and I told him the stand the union was taking, and he said there was a law so a farmer could haul his milk to town, so I continued to haul it. He said he would stand [fol. 161] back of me, so I continued to haul it then and on until Mr. Austin started hauling it again.

Cross-examination:

I am a member of the dairy union, and I wanted to comply with what the union was doing. As to whether I thought I had a right not to work with non-union men and not haul non-union stuff, the matter did not concern me a whole lot. I wanted to abide by union regulations.

Redirect examination:

As far as I know, the Ellenberger milk is brought in by Mrs. Ellenberger herself, and it is her own milk. It is hauled to 845 Lincoln Street. They leave it at the closest place where it is convenient to pick it up. This address, 845 Lincoln Street, is the Brookridge downtown office.

Recross-examination:

The fact is that I continued to haul this lady's milk, and I hauled all the milk she brought there, and I quit hauling when Austin brought the milk in.

FRED REIN, JR.

Direct examination:

I am Fred Rein, Jr. (Documents marked for identification as plaintiffs' Exhibits N and O) I am in the milk transportation business under license from the Public Utilities Com- [fol. 162] mission of Colorado as a carrier. I operate under one permit only, No. PUC 454. At this point Exhibit N was offered in evidence. The following portion thereof was read:

> "It is further ordered, That the applicant shall operate such motor vehicle carrier system according to the schedule filed with this Commission except when prevented from so doing by the Act of God, the public enemy or unusual or extreme weather conditions; and this order is made subject to compliance by the applicant with the Rules and Regulations now in force or to be hereafter adopted by the Commission with respect to motor vehicle carriers and also subject to any future legislative action that may be taken with respect thereto."

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Exhibit admitted.

Exhibit M, a partial list of milk haulers and the status of carriers, admitted.

I have been a common carrier since March 1, 1938. I haul milk to Denver. About 70% of my area is an exclusive area for the transportation of milk. I pick up the milk in the area north and east of Denver. Our area is about 18 miles deep and 31 miles long. We conflict with Colorado Rapid, Fuller Truck Line and Carl Schwab. We conflict in the south-eastern part of our area. As to how many shippers [fol. 163] are in that conflicted area, I have an idea that there is about 30% of them. We pick up milk from about 127 shippers. I employ six men.

On September 1 when this controversy arose, none of these men belonged to the union. I never told my men whether to join the union or not. As to difficulty making deliveries of milk in Denver, we have had diversions. We have had difficulty delivering milk to the plants to which it was consigned, but we nevertheless delivered the milk. We delivered milk to some. It was not very long after the controversy started until three of my men joined the union. As to correct dates when I encountered union pickets in any of the union dairies, I wouldn't know. My drivers were forbidden to deliver milk to union dairies until they joined the union. After my drivers joined the union, they were prohibited from delivering milk to non-union dairies. As to which one it was, it was Beach, and that continued until about a week ago. The headquarters for my business are 2920 Walnut. My trucks start from various stands; I have two at Keensburg, two at Hudson and two at Brighton. Three of those trucks must be stationed out in the country for the reason that they haul freight back and those trucks must go back to begin their route each morning. It is necessary for the men to live in the country so as to get started on their routes each morning. I didn't necessarily have a talk with any of the union men about signing a [fol. 164] union agreement. I haven't had any talk with the boys about signing the agreement. The boys have talked to me numerous times about my men joining the union, but so far as signing an agreement, they have never approached me about signing one, and about two weeks ago, I believe, Mr. Coffey and that other gentleman (indicating Mr. Christol) were over to my place. I think that was the

day they signed up the rest of the boys. I have seen the paper marked plaintiffs' Exhibit O before; Mr. Coffey gave me one of those at the time to which I refer. He just gave it to me and told me to look it over and sign it when I got ready, and I in turn turned it over to the Colorado Motor Carriers.

Exhibit O offered in evidence.

This exhibit has a provision which says the employer agrees that all employees must become and remain members of the union in continuous good standing as a condition of employment, or if you hire non-union men they must make application for membership within five days and complete the application within fifteen days. In the country we are not able to get men on those terms of employment. As a matter of fact I am running one of the trucks now myself because we don't have a man for it. One of the boys that signed up with the last three has given me an order he is [fol. 165] quitting the 1st of October. We haven't been able to get truck drivers out in the country.

Cross-examination:

I didn't suggest that my men join the union; I told my men when Coffey was over if the union had something to sell to go ahead. Part of the men joined and the other three hung off to where it came to a point the boys thought it was getting serious, and they told me they would eventually quit if I insisted that they continue to belong to the union. I never insisted they join; I left it up to them. They talked to me about it the last week or ten days. They still belong to the union.

A. E. O'Neal.

(Adverse party called for cross-examination.)

Cross-examination:

I am A. E. O'Neal. I live in Denver and have lived there since the 6th of July. I lived in Los Angeles, California before that. I am a voter in Los Angeles. At the present time I am international representative of the International Brotherhood of Teamsters, Chauffeurs, Warehouseman and Helpers, and am known as an International organizer. Ex-

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hibit A is the constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. My attention being called to page 14, Article V, page 15, Article V, Paragraph (e):

> [fol. 166] "The organizers shall receive $15,000.00 per year while working under orders from the General President."

I am not under that catgory. I am not working under orders of the President. I am working under the orders of one of the vice-presidents, Mr. Dave Beck. I have my appointment from the General President. I do not think that it outlines in there that I am to take orders from Mr. Beck, but it does in another communication that I have. Being handed Exhibit P, that is the letter I have referred to. I produced it here under subpoena duces tecum.

Plaintiff's Exhibit P offered in evidence and admitted.

My salary as an organizer is $450.00 per month plus expenses. I am not allowed the expense of $17.00 a day; I am allowed expenses only when I am out of the city. I am not away from home now. I am living in Denver; I have established this as my permanent residence. My address is 1310 Clermont. I occupy that with my family. I arrived in Denver somewhere about the 6th or 7th of July, 1945. I have been here all the time. I would not say I have been in charge of the activities of the union in connection with this milk situation, unless they happen to be under the receivership of the International Union. They function on their own initiative. I have been advising them [fol. 167] here. They have offices at 1356 Bannock. This other letter that I have, I believe, is a letter from Mr. Beck, one of the vice-presidents of the International outlining my territory and my partial duties. I have five states—Arizona, New Mexico, Utah, Wyoming, and Colorado. I will do my best to produce that letter tomorrow.

(Witness O'Neal excused to be recalled the following day.)

F. LEONARD BEACH.

Direct examination:

I am F. Leonard Beach, manager of the Beach Milk Company, located at 2201 Arapahoe, Denver. The sidewalk line is the street line. The building is flush with the sidewalk. My unloading dock is on the 22nd Street side. There is a curb cut there. When trucks unload, they back across, back through the curb cut across the sidewalk to the dock where they unload off the sides of the tail gates. The Beach Dairy originally was a partnership composed of my father and mother. My father died August 9 last year. My mother owned a one-half interest in the partnership, and my father's half is in estate proceedings. My mother is executrix of the estate.

As to my position on labor unions in my dairy, it has been that if the men so choose to become union members I did nothing to hinder their decisions in any way. I have never told my men to join or not to join a union. To my knowl- [fol. 168] edge there are no employees of mine who belong to a labor union. None of my employees have asked me to sign up with a union. There is no union committee representing my employees. There has been no bargaining or soliciting of my employees to join a union. There has been no election to choose a committee. My men have never made a point to deliberately declare themselves to me as to whether or not they would join the union, but they have expressed their desire to remain non-union. About eight or ten of my employees have told me that. I didn't approach them in any way to tell me that.

The Beach Milk Company has handled a special grade of milk, in that it meets the requirements for Army consumption. It is known as Type 2 on Army contracts, and under those specifications it is necessary that it be passed by the United States Health Department in compliance with their code and inspected by the Army Veterinary Corps. That includes the farms from which that milk is received as well as the plant where it is processed. In addition to that my company prior to September 1 inspected the herds where this milk came from. I myself spent a great many hours in this work. The purpose of my inspection was a matter of compliance and keeping the quality of the milk to the point where we could meet our contract specifications. If they didn't keep up our specifications and it wasn't

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[fol. 169] possible to correct the condition, we would have to dispense with their milk. I am employing twenty-two milk employees in our plant and about five others. There would be twenty-one of these employees eligible to join the union. It was necessary in connection with our operations to erect a new boiler plaint. It was being built adjacent to the present plant. The boiler house was a structure 24 feet by 48 feet, containing two 210 horse power boilers that we were putting in. We were employing union labor on that plant. Work started under our building permit shortly after the 1st of August. We were trying to finish the work before cold weather set in. I was hoping to have the plant in operation shortly after the 1st of November.

Our milk is marketed on a wholesale basis to the hotels, restaurants, grocery stores, creameries, and the Army account which we have at the present time. We do not make any retail sales. Prior to September 1 our company was using in the neighborhood of 2200 gallons of milk a day. Around 1,000 gallons of this went to the Army. Our next largest customer was the Piggly Wiggly Stores in Denver. Our dealing was directly with the individual store. However, we did carry on business through the main office, and we dealt with the individual stores mostly on deliveries. We made the deliveries of milk to the individual stores with our own trucks and delivery men. We delivered to the [fol. 170] Army at Buckley Field. We had no house-to-house deliveries. We did business with around twenty-five or twenty-six Piggly Wiggly Stores. The stores were in Denver and Arvada. I know of nine of those stores which were union prior to September 1. I would say six or seven carriers delivered milk to my company prior to September 1. On September 1, as far as I know, there were no union trucks delivering to our plant at that time.

I am not clear as to when I first had any controversy at my plant with the union. The first time I met with any union representative, I think was the morning of the 10th of September. Before that I was called on the phone by a representative of the union about six or eight months ago. I don't recall who called me on the phone. Whoever the man was he told me that they had signed a number of Piggly Wiggly stores into the union and he wondered if at that time I would be interested in signing a union contract with them. I told him I was not interested. I have compared the scale of wages I pay with the union scale.

We pay equal to the union scale or better in all cases. Sometime back I had occasion to go before the National War Labor Board to raise the wages of my employees, and since that I have been paying the scale fixed by the National War Labor Board, and in some cases that is higher than the union scale. The next time after the conversation I re- [fol. 171] ferred to that I saw or talked with any of the union officials was the morning of September 10. I talked to Coffey and Mr. Christol at the plaint after 9:30. They came in and broached me and said, "We have a contract here that we would like to have you sign," and I told them that I really was not interested in it because I thought that we had got along very nicely without it, and so I declined to sign the Contract. They pointed out to me that if I refused that they would picket the place, and they also pointed out that they had power that they could exercise with the Piggly Wiggly Stores. At that time I didn't know what that power was, but I have since foud out. They didn't make any statements as to just exactly what they would do, but they just stated they had power to influence me through that, and I refused to sign the contract or come to an agreement with them. They did not show me the contract at that time. They had one with them; I saw it. I couldn't say whether it was printed or typewritten; it was rolled up. I refused to come to any agreement with them, but they did say they had pickets outside waiting for an answer whether I was going to sign or not, and I told them I didn't choose to sign and they went out and picketing started at that time. I don't think there was any talk of a secondary boycott at that time other than they mentioned that they had power with the Piggly Wiggly [fol. 172] Stores. They had between eight and ten pickets at that time. The pickets were talking to truckers and milk haulers, any types of freight that was coming into the plant here, they were trying by the use of picketing to prevent that from being delivered. So far as I know, that was their purpose, and they stayed within a radius of fifty yards to the plant. Some of them were on the sidewalk adjacent to the plant, and some on the other side of the street; I think they went across there to get in the shade. It got pretty hot that day. That is all that occurred that day.

I talked with them the next day, the 11th. That conversation was also at the plant. I asked for the meeting, and I explained to them that it would be necessary to contact

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my attorney, Mr. Nathan Creamer, that being that the business was still in an estate we had no power to enter into a contract at that time, and they said they would like to contact Mr. Creamer, and with that they left. I asked if they could withdraw their pickets, and they said no. They also carried a sign, which stated: "Unfai to Local No. 17." My next meeting with Mr. Coffey or Mr. Christol was on the 11th. I had a phone call on the night of the 11th. When they left they were going to contact Mr. Creamer. I had a phone call from Mr. Creamer that night, but he told me they had contacted him. I next met with them on Thursday the 13th. I asked for the meeting. The purpose of the meeting was I asked them to clear up a statement that I [fol. 173] understood to have been made in the Mayor's office. The statement was not cleared up at that time. I told this to them at that time, that my understanding was that if I would agree to ask my employees to join the union that they would withdraw their pickets. They said that was not true. As I say, it was a misunderstanding and in order to clear that up Mr. Coffey went to the phone and called Mr. Creamer and made an appointment for 11 o'clock the next morning, and Mr. Creamer asked that I be there. I went to his office in the Equitable Building. We didn't come to any agreement there; however, during the conversation it was decideded that they have their attorneys draw up a letter to take the place of the contract which we couldn't sign at that time. I think we made a sort of a date for the next Tuesday to talk to them again. Mr. Creamer was to approve that as to form, as to the estate from a legal angle. I believe that was all the meeting I had on the 13th. Nothing occurred on the 15th, but I did go around and talk to the Piggly Wiggly Store owners to find out what their attitude would be if I joined the union or if I remained non-union. I talked to a majority of them.

The next time I had a meeting with the union representatives was Tuesday the 18th at the plant. At that time they had with them the letter prepared by their attorneys. Being handed plaintiff's Exhibit Q, that is Mr. Creamer's initials. [fol. 174] Mr. Coffey showed me this copy. I don't really recall that he said anything particular about the letter except that it had been O.K.d by Mr. Creamer. He wanted me to sign it. I told him that I didn't feel that I had the moral or legal right to sign a contract which would in reality force my employees into a union or else I would

have to fire them. He had with him at that time a printed contract similar to Exhibit C; I have that with me. I don't know whether he left it there intentionally or not, but after he was gone I found it. He took Exhibit Q with him.

Exhibit Q offered in evidence and admitted.

At this meeting the discussion about the printed agreement was if I would sign that one it would be necessary for me to enter into a negotiated contract or sign this contract at the end when this agreement terminated, which would be December 31, 1954. He said something about the Piggly Wiggly situation. They had broached me with that subject, and I told them I realized that that was the club that they held over my head. At that time I askede Mr. Christol what would happen if I didn't sign this contract, and he said if that was the case it would become necessary for the union to put every effort into destroying the Beach Milk Company as a business—every effort into destroying the Beach Milk Company as a business. As to that I don't [fol. 175] believe I made any comment. As to what they were going to do to the Piggly Wiggly stores, they said that they would not be able to—I have met with them so many times I can't recall just exactly which—they said they came down there, and I think it was under the auspices of their Joint Council, to direct me, tell me that they were going to put in effect a program of secondary boycott with the Piggly Wiggly stores if I didn't choose to sign the contract. As to that, I felt I couldn't sign the contract because I didn't feel I could force my men to sign and join the union agreement which was necessary under their union shop. I believe that substantially covers this conversation. They left at that time, and I did tell them that I had a producer problem whereby animosity had been built up by producers against the union to such an extent that I was fearful they would cause me to lose some of these producers that I had at that time, and I told them I would like to have a little more time. I was going to do what I could to correct this situation. I did not tell them who I was going to contact, and Mr. Coffey told me that he would see the Joint Council and ask them if they could give me more time on this, and he called me later and told me that they had decided to go ahead with their program and I told them, "I am sorry," I still couldn't sign the contract. I made an appointment to see them in the future. I told them the time before I would like to have until Thursday

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[fol. 176] morning to talk with them again. I made an appointment for Thursday morning at 10 o'clock. That is all the transactions I had with them that day. I had some calls from the Piggly Wiggly stores. They told me that they had been contacted by union representatives and told that they would have to discontinue the use of Beach Dairy products or else they would be picketed at their stores. I told them I had not yet reached an agreement with the union. I think there was one case, Piggly Wiggly 24, where we didn't make a delivery on the 20th. Mr. Lambotte called me about not making the deliveries on Thursday, and he told me that he had been contacted by the union and that they had asked him to convey the message that he had been contacted by them. That was the first I heard about it. It was Thursday afternoon that he called and said he had been contacted and been told that any Piggly Wiggly store which handled Beach dairy products, there would be a picket placed on that store and he told me at that time that we would have to discontinue milk deliveries to their stores on Friday morning the 21st.

I had a further talk with the union on Thursday about 2 o'clock in the afternoon. I think I was to see them at ten, and I contacted them later and asked them why they didn't come and they said they understood that meeting had been cancelled. Anyway Mr. Coffey and Mr. Dinsmore did [fol. 177] come over at that time. I discussed with them the printed contract. I had gone over it very thoroughly. In regard to Article I, I asked them if on a signing of the agreement where the members—not members but employees of mine at the present, whether my employees could not choose for themselves whether they would join the union or not. Of course, I said in making the stipulation that we were, on persons coming to work for us, if they would have to join the union. They said they would not agree to that. They told me what I would have to do about having my men join the union. They explained that it would be necessary in case a man didn't want to join the union for me to discharge him. As to how many days I would have to keep those me- before I discharged them, the contract called for fifteen days; however, Mr. Coffey said they would give us an additional week on that. That was the contract I would have to sign. I didn't sign it at that meeting, and the next morning I filed a complaint asking for an injunction.

The picket was at my place until Friday, and they went off on Friday afternoon and have not been there since.

I got word from Mr. Labotte about delivering milk to Piggly Wiggly Stores. He was given a copy of the restraining order. He called me about it, and I told him I would have to check with counsel on that as to what actually [fol. 178] we could do under its powers, and after I consulted counsel I called him back and told him that it would be possible for us to deliver milk and he said to start delivery of milk immediately, which we did. We didn't deliver to any stores until afternoon. Ordinarily we would have made our deliveries in the morning.

As to the effect of the picketing on my place and my getting my regular milk from my own selected shippers, I didn't get the milk that was brought in on Fred J. Rein's trucks. The first day I think there was one truck that had already unloaded before the time the picket went on. I did not get except occasionally when a picket was not there any milk delivered by union drivers between September 10 up to noon September 21st, and my regular shippers were shut off.

Q. Now, did you make arrangements to get some milk from those who were not your regular shippers to take care of that deficiency?

A. It wasn't because of this particular problem that I had made arrangements to get their milk, it was that I had arrangements previously to this to get milk to take care of this shortage.

There was a general shortage of milk in Denver in the month of September, and at that time it just happened permission to use this milk came through just shortly after the 10th of September, and around the 14th we got milk from Johnstown. It wasn't as good a grade as we [fol. 179] had been getting.

Stipulation of counsel that Coffey, one of the defendants, holds the following offices: He is Secretary of the Teamsters Joint Council No. 54, and Acting Secretary of the Milk Drivers and Dairy Employees Local Union No. 537; and Mr. Earl Christol is Business Agent of Milk Drivers and Dairy Employees Local Union No. 537. Mr. Coffey is Recording Secretary of Teamsters Joint Council No. 54.

Throughout the conversation with Mr. Coffey and Mr. Christol at my office September 20 it was brought up that my wage scale in some cases was higher than the union

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contract, and I asked Mr. Coffey about that and he suggested to me that if I was going to sign the contract it would be dated ahead, say, October 1st, and during that period of time he suggested I lower my wages to union scale. I told him that I thought that was a very unfair thing to the employees. That was so I would have a union scale at the time my contract went into effect if I signed one.

I testified yesterday regarding union bricklayers working on my boiler house. On 22nd of September that boiler house would be one-fifth or less completed. I had supplies of material on hand for the union laborers to continue their work. The pickets went on my place on the morning of the 10th and remained until the 21st. From the 10th to the 15th [fol. 180] union bricklayers continued to work on my boiler plant. They quit work Monday the 17th. I wasn't present at the time they were called off the job, so I couldn't testify exactly. They haven't worked there since. They quit except one man who went back to work on the 26th. I wasn't able to get anybo-y else. I was unable to get coal delivered during this time. There were a number of occasions when I had difficulty getting coal in. The union driver would not cross the picket line with the coal and at that our plant was shut down from about 7:30 one morning until almost noon before we could go to work, and we had all the milk there ready to be processed but there was no steam. That was Tuesday the 18th of September. I take coal from the Rio Grande Fuel Company. I finally managed to get delivery of the coal. If I had not gotten the coal, it would have meant a considerable amount of milk would have been spoiled.

Cross-examination:

In some cases I pay more than the union scale, and in no case do I pay less. I pay more than the union scale to my wholesale drivers. There are five of those. In the case of the drivers the union scale is 3¾% on cream and milk and ours is 4¾%, and other products is 5 in our case and 4 in theirs. Our drivers' scale has not been changed as to the amount that they were paid since 1938 or 1939. It has not [fol. 181] been changed as to the amount, but we had a rather complicated system of paying. It amounted to maybe a half cent on quarts and something else on half gallons, and to expedite it and make it simpler from the

accounting angle awhile back we changed it over. Before I say that, the amount was not changed at all that we paid, we used that as a basis and then set it up so we would not be on a percentage basis, giving the men credit for empties returned. That was done about two months ago. It had nothing to do with the union controversy; it was before that time.

As far as I was concerned, I was getting union milk and non-union milk up to the time of the picket. The reason of the picket was that they wanted me to sign a contract and I said I wasn't morally or legally justified in doing that. I have always had a feeling of moral responsibility to my men. As far as this particular instance [referring to joining the union] was concerned, here is what it all boils down to. I just felt the men should be taken into consideration, knowing it was their problem. It didn't cost me a cent and it will cost them union dues, and I felt that was their problem. It was absolutely up to the men to join the union; it was a man's own judgment. As far as I was concerned, it would not cost me a cent. I didn't feel I had the legal right to ask them to spend $3.00 a month or the moral right without their consent. I don't recall telling them to go see [fol. 182] my lawyer. I didn't tell them to go see Mr. Creamer. I told them through a conversation with him he pointed out that it would be impossible for us to enter into a contract at that time, and I suggested that they ask him to verify that statement. I didn't ask them to go see him. I presume that it is right that they didn't know he was my attorney until I told them. I don't know whether they went to see him or whether they phoned him. At that time I had some idea of what the union contract was. I knew at that time that the union scale was lower than my scale in certain respects. I couldn't say that my men didn't want to join the union because I had never asked them. I did tell my men what I thought about it [referring to the union]. I told them I was not interested in it. I asked them to see my lawyer regarding the fact we couldn't enter into a contract. The only thing I wanted to bring out was that it was impossible to enter into a contract at this time. I didn't have any other point. I didn't want to demand or coerce them [referring to my men] into joining the union against their will. At that time I didn't know whether they wanted to join or not. My men would

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have had to join if I had signed that contract; they wouldn't have had any other choice. It was either that or I would have to discharge them. That is in the contract. There was a discussion between me any my men through the men's conversation with me. I never approached them on [fol. 183] the subject, but the pickets on the outside of the plant made the union a more or less subject; it was the conversation at the plant practically all the time, and they approached me and told me they were not particularly interested in joining the union, that they didn't see what it would do for them. In fact, some of them very pointedly said they would not join the union. At least five or six of them said that. I have probably in the neighborhood of twenty or twenty-one employees. The others didn't make a point of it and I didn't ask them. As to asking me to describe the attitude of the majority of my men; they never expressed an opinion. My number of employees are about twenty-eight altogether, that includes everybody eligible to join the union and some that are not eligible. We have some girls there. As I say, I didn't encourage any talk over the matter. I didn't pay much attention to the conversations. All I know is in some cases they expressed an opinion they were prejudiced to the set-up. At least five or six had a positive opinion that they didn't want to join. I gave my men clearly to understand that I was interested in them. The money, that is the $3.00 a month for dues was part of the reason I thought I would not join, but I didn't want to force them to do anything against their will. The five or six that said anything about it was enough; I didn't have to go much farther to know that I had at least a few men opposed to it. As to why I didn't ask the other men, [fol. 184] I didn't see why the union didn't talk to them. It was perfectly all right with me to have them find out. I can't say why I didn't ask the other men who said nothing about it; possibly it was because I was doing something else. I had to run my business. Another reason that I didn't go to my men is because I didn't know what legal rights I had to talk to my men about the union.

In reference to the pickets there were eight or ten of them during the first couple of days. As far as I could see these men [pickets] were doing their best to get me to join the union. I never paid particular attention to what their actions were. Evidently they were standing on the side-

walk and talking. They were there at the plant. There was just one sign. As to what they were doing with the sign, they would change off. One man would carry it awhile and another carry it for awhile and then another, and all the time they were all endeavoring to stop freight shipments, milk, coal and what other materials that came into the plant.

Q. How were they endeavoring to do that, what did they do to stop it?

A. The only visible thing I could see they did was talk to the drivers, and in some cases they induced them to leave. I mean the drivers of the trucks that were coming to the plant, including milk haulers, union and non-union. I didn't hear what they said to the drivers. I know they left because [fol. 185] I didn't receive the milk; that was evidence enough for me. I didn't receive the milk particularly from Fred Rein's trucks. I saw them talk to some of Fred Rein's truck drivers. I was too far away to hear the conversation. All these eight or ten men were on 22nd Street. The picket with the sign walked up and down. Sometimes I would see one man carrying the sign and then another. As to how many of the men who were pickets are in the court room, there are three of them in the court room at the present time; they are Mr. Coffey, Mr. Christol and the heavy-set gentleman behind Mr. Reeves (identified as John Flockhart). I have heard all the witnesses testify in this case. I don't know that they all testified to what Mr. Coffey was doing on the 10th and 11th. I could see that he was a fellow that got around quite a little. I didn't talk to the pickets a great deal, I did talk to them at times. There was one there later on, there weren't so many pickets there. In fact, there were two or three, and it gradually dwindled off until there was only one, and I did talk to him. It was a friendly talk; I didn't feel any particular animosity against him. I said on the 10th and 11th there were eight or ten pickets. There were two or three days there was only one man.

On September 13 there was a conference between Mr. Coffey, Mr. Christol and I in Mr. Creamer's office. I still have a feeling of moral responsibility for my men. I said that they were trying to get me sincerely to ask my men. I [fol. 186] got the message through Mr. Creamer. I understood he put up the proposition to me that the pickets would be drawn off. Later on it was denied that that was the union's stand, and eventually in between the chain some

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place that it had been adverse to the point where I got that myself. I didn't say I was considering whether I would or would not sincerely ask. I wanted to find out the statement. I didn't understand it and that is the reason I called Mr. Coffey to get him to clarify it. I don't think Mr. Coffey said anything about it at that time. It was my understanding from my attorney that if I would sincerely ask my men to join, the union might take the pickets off. I didn't ask Mr. Coffey that. I wanted to find out what it was and I was inquiring as to what had gone on. Evidently I had been the subject of some conversation and I wanted to clear it up. My attorney told me what the subject of the conversation was, and I was trying to find out whether that was true. The final meeting was not on September 18. I think we had one again on Thursday the 20th. It was the next day I got my injunction, and it was at that meeting I told the union representatives that I didn't have the moral right to ask my men to join.

I mentioned in my direct that one of the reasons I wouldn't enter into this was that the producers had animosity against the union and that I might have trouble [fol. 187] with the producers. I don't know exactly who were these producers, I can't name any one in particular. It was conveyed to me through Mr. Austin. In our conversation Mr. Austin asked me whether I had signed up the contract or not, and I told him I had not and he went on to explain that there was a definite feeling among producers on his particular routes, mine included, that they were not interested in the union anyway whatever and they didn't want to see their milk go into union dairies; and then I had some misgiving if I joined the union producers might cut off my milk. I never discussed this with Mr. Moore because Mr. Moore never had any control on them. If they didn't want to send milk to the Beach Company I am sure they wouldn't. He has control, but he never has in the past exercised that control, so I saw no reason why he should now. It has been a practice in the past that the producer has the right to ship his milk to any dairy he so chooses. I don't have the slightest idea whether the producers who do not like the union are members of the Denver Producers Association. We have producers that belong to the Association and we have some that do not. I never inquired into that. In some cases the checks are sent to the cooperative.

In most cases we send the checks direct to the producers; I would say nine out of ten are sent direct to the producers. [fol. 188] As to my sending a certain amount to the co-operative, I don't know about that. I understand they have to operate, but I don't know how they obtain their expense money. We send them money. I did not say 10% of the money goes to the co-operative; I say 10% of the shippers involved are handled through the co-operative. I have a contract with Mr. Moore's Association. As to what percentage goes to the co-operative, I have never made it a point to investigate that too thoroughly, so I could not commit myself on it. I have been in this business and I have contact with the producers, and I know they have an association. I don't know that Mr. Moore is executive secretary. I can't truthfully say what money I send to the office of the co-operative, because that is taken care of by my mother. She does the bookkeeping work, and I feel it is in competent hands and I never investigated it too thoroughly. I can't enlighten you on that [referring to money being sent to co-operative].

We get permission through the quarter-master to get additional milk to take care of supplies for Buckley Field, which was to be put into our plant to offset milk which was sent to Buckley Field. My mother went away for a few days. I presume that is so: that I get milk from members and non-members of the Association. I couldn't swear whether they are members or not; it is of no interest to us. [fol. 189] From my records I couldn't say which of these producers have to pay 1% to the co-operative. I don't take care of those records; I wouldn't know.

Being handed defendants' Exhibit 2 and asked to state what that is, it seems to me it is very similar to a letter of transmittal, that is a letter from the War Labor Board under date of March 21st advising me of the amounts I might pay certain employees that are mentioned here. I abided by that. I applied for my men to get higher wages. I am not sure whether this directive went out on October 18 or not. I have never consulted anybody on it. We are still on that scale. I didn't raise the wages after October 18 when the war ceased. I think that that scale compares very favorably with the union scale because that is all they granted me. The wage scale that we pay we have the privilege of paying between 60 and 75 cents an hour, depending on whether the man is capable of doing certain jobs. It

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doesn't specify he has to get a certain amount if he does a certain work. Being handed this, I say it is the scale that I am operating under now. I don't know definitely whether the union scale is less or more than that, but I think it is the same, the same top scale here is all that I know. By top men I mean top men in co-operatives. Naturally in every establishment you have some men that are better than [fol. 190] others. It is right that one man is better than another. All of our men are not getting 75 cents an hour.

WALTER C. MOORE.

Direct examination:

I am Walter C. Moore, manager of the Denver Milk Producers, Inc., a co-operative milk marketing organization. Plaintiffs' Exhibit R marked for identification. It is organized as a farmer's co-operative association under the laws of Colorado. Exhibit R contains our articles of incorporation and by-laws and the membership agreement between the co-operative and its members.

Exhibit R admitted in evidence without objection. Plaintiffs' Exhibits S, T, and U marked for identification.

I have been manager of the Denver Milk Producers since January, 1942. Prior to that I was Federal Milk Marketing Administrator for the Denver sales area. My duties were outlined by the Secretary of Agriculture, and it covered the pooling of milk. Under this program producers are all paid the same price regardless of how their milk was used. The dealers are all paid the same price regardless of how the milk is used. It is known as the utilization basis. From that I started the Denver Milk Producers.

We have approximately 1,200 members. The members reside roughly in the eight counties surrounding Denver, [fol. 191] north, south, east and west. On the north we go into Larimer, Weld, Boulder, Jefferson, Adams, Arapahoe, and Elbert. I believe those are the counties. There might be some in El Paso or Douglas. Exhibit S is the type of contract every member signs. It is also in printed pamphlet. Exhibit S admitted in evidence. Describing our organization briefly, we have nine directors, one elected from each of the nine districts. These directors are elected for three years, and each year we elect three. Our officers are

Fred L. Hewitt, President, from Brighton; William R. Rogerson, of Parker, Vice-president; George Day, of Golden, Secretary. They are all farmer producers of milk. To be eligible to membership, one must be a producer of milk and his milk must be acceptable to the City Board of Health, he must pass City inspection. Any farmer producer in the area is eligible to join. The only financial arrangement we have with the producers is that we can pour his milk with that of others and pay him a blended price; that is, he gets his share of the milk sold in fluid form and gets his share of any surplus. He permits a deduction of one cent per pound of butterfat from the milk check for the maintenance of the office. Milk sold in bottles commands a higher price. We call it Class 1, that is just the utilization class. It might be sold to restaurants in a can. If a dairy has more [fol. 192] fluid milk than it can sell, what it does with the balance is up to the plant that has the milk. Some plants use it for ice cream and cottage cheese. It is manufactured in some form or other. As to the price for milk that is used for manufacturing purposes, it goes on a blended price. As to who directs where the milk should be delivered, we have two types of operation. I think the court should understand this, it is quite vital. Originally, about 100 shippers sent their milk to Adolph Coors Company and then it was hauled to the plants in Denver needing it, and it was directly under our supervision. Then later, because of war conditions, Adolph Coors declined to handle that milk any longer and we took the milk direct from the farmers to the plants that needed it. In that case, the dealer pays for the milk and we pay the farmer. As I say, there are about 100 of them. Milk is hauled partly by Austin and partly by Swena Transfer. It is hauled by those that have licenses, except Swena Transfer. Originally Swena had a permit to haul from out of Coors to Denver. They didn't have a pick-up license and in this arrangement Swena would have been forced out of business after having given very satisfactory service. Through arrangements with Austin, we divided that area, let-ing Swena haul some of the milk to Denver and Austin the rest of it. Quite a number of the dairies have their own herds for part of their supply. As to which [fol. 193] of the large ones, they are City Park, Brookridge, and Cambridge. They handled their milk from their own herds as their own proposition. We don't fool with their shipments. Our pool handles about 98% of the milk pur-

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chased from farmers. That doesn't include the producer-distributor like Brookridge, City Park, and Cambridge on their own production; it includes them on the amount which they secure from the farmer-producer. We have never put a restriction on the dealers, whether they bought member or non-member milk; especially during this emergency, a dealer has a perfect right to take on any shipper he sees fit, so long as they pass City requirement, and then we sign those men up and they become members that way. Now, there is a big turnover in shippers. Shippers go out of business, new ones come in. I can't tell you how much is member or non-member. However, it is all in the 98%, all pooled together. By that I mean a farmer sells either his herd or his farm, and others take up the operation. In normal times our turnover was 1%, but I haven't had time to calculate it, I think it is greater now.

As to why the dairies pay our organization, the dealers supply us twice a month with reports showing the milk they purchased, from whom they purchased it, the test, pounds of butterfat, and their report shows the utilization of that milk. Under the contract, which is part of your ex-[fol. 194] hibit, the 83.6 class, which is our price, under our OPA ceiling was raised to 90. A new contract was not written, we were operating under the 90 OPA price for Class 1 milk, that is, butterfat. The rest is 73.6. All the milk in excess of what goes into the bottles or is used as fluid milk. And then we figure the blended price from that, and it happens all of our milk is in the 90-cent bracket. However, that is not true of this list only as the first we ever had. On that basis we notify the dealer what to pay the farmer after calculating all their reports from all the dealers—twenty-nine that we are operating with. We have a bonus program in addition to that and the City Health Department goes into the plant once each two weeks, takes a sample of the milk and makes what they call a methylene blue test and if it stands up under five and half hours and the plant is clean, the farmer is entitled to a 3-cent bonus. We are notified who the shippers are by the Health Department each two weeks. We calculate all the milk sold in fluid form at 90 cents, all that is sold at 73.6, take the bonus money away from it and divide the pounds of fat into the dealers figures and then we arrive at the blended price, and from that one cent is deducted for the operation of the office, and then the shippers who get the 3-cent bonus is

added to the blended price and we credit the dealers. We pay whatever the blended price is plus the bonus money and tell him what to pay the shipper. If those payments to [fol. 195] the shippers are greater than the cost of his particular milk, the dealer pays that into our organization account, and if it is less, we pay it the distributor, so every dealer pays the same price for the milk based on his use of the milk. As to who sends the checks to the farmers, in all cases except approximately one hundred at Coors the dealer pays the shippers. On the Coors proposition the money is paid to us and we pay the shippers. The reason for that is we may have to move the shippers to two or three different places, and it is very confusing to a farmer to get two or three checks, and we make one check to the farmer to avoid confusion. As to our commission, in billing the dealer for this milk we bill our commission in it and then it is deducted from the amount paid us, and we pay the difference to the farmer. The dealer sends us a check for what we call our administration account; that is, a so-called check-off of 1% per pound butterfat, and if he bought any milk from the shipper he mails us the other two checks involved with it. That is because we have different bank accounts.

As to the milk coming in from the farmers, we don't do anything about it. We let the shipper pick the plant he desires and wants his milk to go to, and we have nothing to do with it insofar as the handling of the milk or designation [fol. 196] where it goes. Our function is to tell the dealer what to pay that farmer for the milk. Of course, they must meet the City Health Department requirements, and if a producer has difficulty with distribution many times they come to us and want to change from one to another, and we notify the dealer of the difficulty and he contacts the shipper, and if he can straighten it out, all right; and if he cannot, we permit the shipper to change.

The Beach Company handles milk upon which there is a premium. Mr. Beach got the contract for Buckley Field, I would say three years ago, I may be wrong. He had some difficulty with bacteria in that milk. The Army required a 30,000 pasteurized count on bacteria; his milk was running higher. Mr. Fred Beach was then running the plant, and they were threatened with the loss of the contract, so Mr. Beach went out to the country and helped a lot of the shippers to meet the Army requirements. He ran

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into considerable difficulty with the farmers taking the same price as other shippers and he started working to meet the Army requirement. So he established at that time a ten-cent per hundre-weight bonus for milk that carried a bacteria raw count of 200,000 or under. That was a slightly higher price than the others were getting. It was extra and had nothing to do with the pool. I didn't handle the transaction. It was taken up by Beach with some modifica- [fol. 197] tion. He told me he was going to pay 15 cents. They have been paying the premium to the farmers, and those farmers have to meet his requirements as well as the City's. So he gets a special grade of milk from specially approved farmers and he is able to sell it to the Army at one-half cent above the regulation price. He does not sell to Piggly Wiggly at the premium. Piggly Wiggly couldn't pay above OPA ceiling.

Harold Hennigh, E. W. Johnson, O. T. Holland, and Eston Buster are all members of our organization, and they handle Golden Guernsey milk, and that is milk that has to be handled through Carlson-Frink.

Until this disturbance arose, we have never moved milk from one dairy to another against the wish of the shipper. The only milk we move around is this Coors milk that I have described. I have no control over the carriers whatsoever. As to whether they are in my employ, in the case of the shippers from Coors we do pay those carriers because we handle the money for all the milk; we just pay them as public carriers. Some of the carriers are members of our association as producers of milk, and that applies to Borgmann Brothers. About the time this controversy arose with the union, I had occasion to send a letter to my members as to the position of the producers. The letter of September 17 was not sent out; it was handed [fol. 198] to solicitors in the field. That was to straighten out some difficulty over milk going to some shippers. The letter of September 5 was mailed to my members.

Exhibits T and U offered and admitted in evidence, there being no objection.

I talked with Mr. Coffey on the 28th of July. The conversation was entirely over the phone. He asked me what was troubling Ted White, who is the plant operator or foreman of the Gold Coin Creamery. I told him [Coffey] we had gotten the word commencing Monday, July 30th, Colorado Rapid Transit would not be permitted to unload in

union plants, and I told him that as far as we were concerned it was not our business whether Colorado Rapid belonged to the union or not, but I would not see any milk destroyed and if the union plants could not unload the milk, I would move it to non-union plants.

As to any statement by me as to whether it was my business whether any man joined the union, I said we would not be a party to force men into the union. As I recall the conversation, I said it wasn't my business. Mr. Coffey didn't say anything but asked what was wrong with Ted White, or some expression. I later attended a meeting at the office of the Colorado Employers in the Boston Building, of which Mr. Logan was president, at which Mr. Coffey [fol. 199] and other union representatives were present. Mr. O'Neal, Mr. Coffey, Mr. Christol, and one other party whose name I do not have were present. I was asked to attend the meeting, and Mr. Logan outlined the difficulties the union was having with Colorado Rapid Transit. He [Logan] said there had been an old contract in effect for several years that wasn't being observed and the matter was in the hands of the War Labor Board. No decision had been received, and they were—well, they stopped the milk from going into the union plants. He stated the matter was before the War Labor Board, but not decided. He said the union was demanding that the drivers join the union. The majority did, only the Colorado Rapid had a contract with the union that had not been active but not terminated, and the drivers did not belong to the union and were not paying dues. The purpose of calling the meeting was to try to adjust the difficulty. I was asked whether there was anything I could do, what my position was. I said it wasn't my business to belong to the union, that we would not have milk destroyed. If the union plant could not handle it, we would move it to non-union plants. I was asked if I objected to some one else hauling the milk, and I said no, that my job was to market the milk and not to haul it.

[fol. 200] (Witness Moore excused so that the following witness could be recalled.)

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F. Leonard Beach.

(Having been recalled and being previously sworn.)

Direct examination:

As to the proportion of my milk that I sell to the Piggly Wiggly stores, I would say it is half of my civilian trade. If Piggly Wiggly had refused to take my milk on account of threatened picketing, it would have left me with a surplus for which I would have had no immediate market. I had no place to sell this milk, and by having this surplus I would necessarily have to stop some of my shippers coming to my place and I would have lost them, which would have had a serious effect on my business.

(Witness excused.)

Walter C. Moore.

(Resumed the stand for further examination.)

Direct examination:

I had a conversation with Mr. Austin and Mr. Bullard relative to the handling of producers in their area. This was on September 1 Saturday morning. Mr. Austin came to my office and discussed with me what disposition he [fol. 201] should make of the milk on his trucks going into union plants should he be prohibited from taking his milk to those plants, and I gave him a list where to deliver the milk should he be stopped. At this time I also told him I didn't want interference in the country among shippers, and I called for Mr. Bullard, expecting to talk to him on the phone and he came to the office. We located him at one of the dairies. Mr. Bullard came to the office while Mr. Austin was there, and I told him because of the conflict in the area not to disturb the shippers between the trucks, the same as I had told Mr. Austin, and if he did do it I would notify the shippers of his actions. That was the conversation on interference between the two trucks. I don't recall anything being said by either of us taking a position for or against the union. There have been lots of conversations. I don't recall any at that time.

I was present at a meeting in the office of Mayor Stapleton on September 12. There was also present Mr. Hubbard,

of Meadow Gold; Mr. Cannon of the City Park Dairy; Mr. Reeves and Mr. Clark of Carlson-Frink; Mr. O'Neal, Mr. Coffey, Mr. Voorhies, and I had with me one of my own men, Mr. Frank Minton, Jr., and the Mayor was there and Mr. Lindsey, the City Attorney, and Mr. Kirschwing, Manager of Safety. I was there at the invitation of the Mayor's secretary, Mr. Dutton. I can't repeat the conversation. My understanding was we were called there trying to iron [fol. 202] out the difficulties and get the milk into the plants where it was needed. A truce was suggested by Mr. Reeves of Carlson-Frink. We had a lot of conversation about was it truly a truce. Mr. O'Neal wouldn't agree to it on the basis of pulling off the pickets in the non-union plants, said they would lose all they had gained. The meeting broke up at noon without a decision reached. We went back in the afternoon. Mr. Voorhies didn't return in the afternoon. He was a union man, but I believe all the rest of them were there. I am not so sure Kirschwing was there, but I believe all the rest were, and I believe the meeting opened with a statement made from Mr. O'Neal asking for my position, and I told them I was willing to agree to a truce but it would have to be a truce, if we had it, that is, go back to the status of where we were before we got into the difficulty, going back into the original plants and no disturbance within thirty days. Mr. O'Neal said, "We will permit Austin to go back into the union plants," and Mr. Clark of Carlson-Frink said, "Do you mean all non-union trucks can go into union plants?" And Mr. O'Neal said "Yes." There was nothing said about a thirty-day period at this time, that was the original suggestion of Mr. Reeves. My understanding was, if it was a truce we would go back to the old position. That was never agreed upon. My statement was if they were going [fol. 203] to pull the trucks out of these plants I would like to have a little notice in addition. We make these adjustments in advance on milk coming from Brighton and those trucks have to know where to take the milk before we know it is stopped. Mr. O'Neal said he would give a reasonable notice and I said, "What is reasonable notice?" He said, "Twenty-four hours." The Mayor said, "You would allow forty-eight hours wouldn't you?" As we left the room, Mr. Lindsey had a pad and stopped Mr. O'Neal and I and said, "I want to get this straight. You have agreed to let the non-union trucks resume delivery into the union plants

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and will not stop deliveries again only on a forty-eight hour notice?" Mr. O'Neal says, "That is right," and Mr. Lindsey says to me, "Is that your understanding?" and I said, "Yes." That is the wording as I recall it. The union kept that reservation all the time, that they would reserve their right to picket the plants. They would allow delivery unless stopped on forty-eight-hour notice, but there was no reservation whatever on the picketing of stores in this agreement.

Since the 12th I don't know of any main carrier that has been unionized completely. There were several unionized prior to this date, but if there has been any since, I don't know about it. Rein was completely unionized before that time, as I recall it. Pickets went on at Beach about the [fol. 204] 10th of September. As I recall it, it was sometime in that interval between the 10th and 21st that the pickets went on Midwest. During the period between the 1st to the 12th of September, the only disturbance I know of—well, there were two disturbances—at no time during this whole controversy were the union drivers going into Beach on account of the pickets, and the union drivers into Almhurst that one day that they were picketed, and one shipper on the Castle Rock line, Tom Bradbury of Castle Rock informed the manager of Evalona that he could not haul Bradbury's milk to him the following day. I don't remember the date of that conversation, but Sam Bish, the manager, called and told about it. It happened that particular man hauled his milk from Castle Rock or Sedalia to a man at Littleton and the non-union truck picked that up and delivered it to Evalona. During the time the pickets were on at Beach, union drivers were not making deliveries. In one instance we diverted shippers on Fred Rein's trucks and Grant Vail from Beach a non-union dairy to a union dairy. They asked me what disposition to make of the milk and I directed it to a union plant. Beginning the 2nd Austin Brothers was the only non-union truck line that could not deliver milk to a union plant. Austin Brothers were permitted to unload in Arvada, a union plant, the 2nd, 3rd and 4th, but on the 5th they stopped deliveries [fol. 205] to the Arvada dairy, and then on the 6th all non-union drivers were not permitted, or the union plants were not permitted to unload and process milk from non-union drivers or haulers at union dairies and that continued through the 12th. The result of the stoppage of non-union

milk to union dairies and vice versa was we had more milk on non-union dairies, non-union trucks, than union milk compared with the demands. Since the close of our pool for the two weeks, the first two weeks of September, eleven days of which we had this interference, the reports from Beatrice Creamery show their sales of milk dropped compared with the two weeks previous of 4,120 quarts per day. That is, the sales at the Beatrice during this period declined 4,120 quarts, Carlson-Frink 1,040, and Brookridge 560. Those were the three union dairies that were affected more than any other dairies.

As to the general situation on the production of milk, during the first half of 1945 compared with the first half of the previous year, for the first half of September it is 9.4% lower than the same two weeks a year prior, and our sales were 18% higher. Those are our reports on the sales. The year before we had more milk in what we term our lower bracket than we had this year. There are a number of things that account for that situation. The union isn't to blame for that at all; it is an economic situation. Our price is not adequate for the producers. Farmers have [fol. 206] been able to make more money on their farms than to produce milk through milch cows, because they had a better market in California for them than our farmers here, they can't afford to own them. They are taking what they call their "springers"—That resulted in a general drop in production. The demands for fluid milk w*as* much greater than they have ever been, and we are not supplying all the demands. Regardless of the union, we would not have been able to supply all the demands. There always is a shortage of milk, but this year it was more acute than ever before. Normally, this market drops from a flush production in May, about the middle of September about 35% in all of our production. This year we are nearer 45% to the low point, and I don't think we have hit the low joint yet. However, I have no proof of that.

As to the result as far as the farmers were concerned about getting milk to the people they wanted to sell to, the day the union cars followed the trucks out of Boulder the shipper who is my director in that district called me from Longmont and said, "I want you to call a meeting in Longmont tomorrow." I said, "I can't get a notice out for tomorrow," and he said, "Tell the truckers to tell every shipper to be there, and I want you to be there." I went

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to the meeting and there were approximately 100 farmers [fol. 207] out, and without any exception, the farmers were bitterly opposed to the action of the union. One farmer in particular said, "If a union truck drives in my yard he cannot have my milk," and if I am not mistaken, that man is Lawrence Pencost. He was the only one as outspoken as that, but without exception, whenever the question was asked by the chairman of the meeting what their attitude was and to stand up if they were opposed to the action of the union, without exception every man stood up at that meeting. As I say, they were called there at the request of the shipper in the Longmont district. We have some other cases, and this was in the testimony made by Mr. Eichholtz of Meadow Gold, in which four shippers refused to go back to their plants. He was asked the names of those shippers and couldn't provide it, but I have gotten it from the record, and they are Levan Cowden, M. Rasmussen, W. M. O'Brien, and Wilkie Collins. They are on the truck line down near Parker. The morning after, I am quite sure it was the 13th, word had been sent out to return the milk to the original plants it came from, and one hauler got to New Reliable; he called me and says, "These four shippers told me not to deliver this milk there, what shall I do with it?" I said, "You are working for the farmers the same as I am. You put the milk where the farmers order it." I called Meadow Gold and told them [fol. 208] the conversation. They sent a man out and the farmers apparently did not give him very definite information. In fact, I got the report that some of them were up on the silo and he didn't go up to see them and the next day Hall called me and said these men were dissatisfied, and then Lester Rose sent word these men had been together and said if their milk was disturbed again they were going to sell the cows. Those are the personal contacts I have had, except for a meeting at Fairview School, at which five union men were present and the situation was discussed. That was Tuesday evening September 18th. For the union Mr. Voorhies was the first speaker, Mr. Coffey next and Mr. O'Neal next. Later in the evening Mr. Lindsey made a few remarks and Mr. Christol got up and announced or made a statement about something that had happened. I don't recall what that was, but those are the five men there representing the union. Mr. Clynke, a producer living southeast of Boulder, was the one that

asked for the meeting, told the truckers to get word to their shippers, and he presided. He is the director from that district, District No. 2, and he got the milk shippers that word. He is not connected with the Pioneer Truck Line; he ships on the Pioneer. So far as I know, there is no connection between him and the Pioneer. Mr. Voorhies made a statement that the story was out that they were going to [fol. 209] charge the farmers $25.00 for membership, and then there was something about $3.00. He corrected all those statements and said they had no intention to organize the farmers. I believe it was he that said, "If they had them they wouldn't know what to do with them." Mr. Coffey followed with statements verifying what Mr. Voorhies had said. Mr. O'Neal followed with statements that he had been raised on a farm in Arkansas, that the last year of operation was 1928. He couldn't make a living at that time and he went to California, started delivering milk in 1940, and made the statement they were still selling milk at 14c a quart in Los Angeles and paying the farmer $1.17 for butterfat, and the government report shows both statements not true. The government report shows fluid milk is 14½c and the farmers get $1.02 for butterfat. That is the government record. He also criticised me for selling milk other than 73.6 because the dealer made more money on by-products than they made on fluid milk. There was a general discussion. Mr. Clynke asked the question if the union was going to require farmers who hauled their own milk in to join the union. Mr. Voorhies replied, "We don't know of any case where farmers haul their own milk, but if there were, they wouldn't have to join the union." Later in the evening I reminded them of the case of Ray Walker, [fol. 210] who testified in this court in this trial. There was no answer made to that; I don't think they knew. Mr. Coffey was at the meeting.

I heard the testimony of Mr. Walker that Mr. Coffey signed his receipt, but I had forgotten about it. Mr. Lindsey said he was with some Western Headquarters—I didn't get all the title, I mean the name of the union he was with. He wanted to straighten out some of the statements made by, I believe, Austin Brothers, about what good the union was, and in his statement he said that in our fight to get a better price for milk with the OPA in Denver that the A. F. of L. had been opposing it. I reminded them of the fact that when we got into this fight we called Jimmie

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Brownlow, who was head of the A. F. of L., at the suggestion of Congressman Hill, and we got nowhere with it. Later, when we were in Washington, had an appointment made with the OPA by Senator Johnson, that both the C. I. O. and A. F. of L. attended this meeting and opposed our getting a raise in the price. Mr. O'Neal mentioned the fact that it was in the general hold-the-line order that OPA —or rather A. F. of L. appeared in this meeting. At that meeting Mr. Bob Austin made the statement, that is a brother of the two boys who have been on the stand, and in the partnership now, and said that he spent five years in the Army and that he was fighting for liberty and came [fol. 211] home and found none, found this condition. Both Linton and Fred Austin said they objected to their men being hounded all the time with the labor solicitors, that is, those soliciting them to join the union. The boys, as I recall it, said they had told them they did not want to join the union and didn't want to be molested so much by them. That is all I recall.

Exhibit I is a contract between the dairies and us. This price of 83.6 for Class I is now 90c on the basis of OPA, without a new contract having been written. That contract is binding and the dealers have all agreed to 90c, the OPA ceiling, and when that was granted the dealers got a half cent a quart raise and the consumer went from 13c to 13½c, and all that money went to the producer of milk. The dealers got a half cent a quart raise and the farmers got 6.4 raise in their price on Class I milk out of the adjustment, but we didn't write a new contract then, because the OPA regulations governed our price.

Cross-examination:

I mentioned some conference in Washington in the spring of 1943. I was in Washington in the fall and got no results whatever, came back home and we had a higher offer for our milk than this 83.6, we could sell it for manufacturing at 95 and we were going to take the milk out of the market and sell it at a higher price, and we approached the Mayor [fol. 212] with it and at our suggestion he had Mr. Lindsey draw our famous ordinance or excise tax never expecting that to go into effect. This program had been attempted in other markets and before it went into effect the OPA gave them the raise. The program I meant that didn't go into effect was the excise tax.

I stated in the spring of 1943 these labor organizations opposed a raise. When I came back I reported that to the producers. That did not cause me to harbor any resentment. Mr. O'Neal pointed out at that time that it was to hold the line. This was a friendly meeting. At this meeting they were mostly all producers, not so many farmers. Mr. O'Neal agreed that the farmers were not getting enough and said the farmers in Los Angeles were getting more. Mr. O'Neal did not evince any hostility against the farmers; he was very sympathetic toward the problem. Mr. Voorhies made it plain that the unions weren't trying to organize the farmers. I don't know who started that rumor; I had nothing to do with it. I don't know about the truckers. I don't know where the story started.

I said something about Mr. Lindsey at the Mayor's suggestion drawing up an ordinance for an excise tax. I was at that meeting and the purpose was to pay a tax on every bottle of milk sold in Denver to be paid to the producers [fol. 213] as a subsidy, and the ordinance was passed. According to the OPA we were losing money; something had to be done. The City of Denver wasn't going to get any milk. Whether we had an excise tax or not, the farmers were going out of business and we were groping around for something, and we went to the Mayor and laid the thing before him, and I said, "What can I do?" And they had attempted this thing in Bend, Oregon, and they had drawn such an ordinance, and before it went into effect the OPA granted a raise and it never went into effect. On the present price there would not be milk delivered in Denver. I didn't threaten the Mayor; I informed the Mayor that we had a better market than the consumers of Denver could pay for it under the OPA ceiling, and we were going to sell the milk to the highest bidder where we could. We were going to sell it to the Adolph Coors Company in Golden. We didn't control 98% of the milk. I don't recall how much we control. We had a large part of the milk; our contract provides we could not put it into effect unless we had 65 per cent. We must have had 65% or more. As I said before, unless we get a higher price we will sell to the highest bidder. I realized it would be a rather serious situation if Denver didn't get milk; I called it a tragedy. It didn't matter whether I inflicted a tragedy, that was the situation. You can't have farmers producing milk and [fol. 214] losing money on it. They just won't do it.

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Defendants' Exhibit 3 marked for identification. It is a photostatic copy of an advertisement printed in the Rocky Mountain News by the Denver Milk Producers, Inc., Walter C. Moore, Manager, dated November 2, 1943. I meant what I said in that advertisement. I wasn't willing to stop the delivery of milk to hospitals; they were always exempted. There is nothing in there about exempting hospitals, but the dealer always understood that.

My association received for administration expense one cent per pound butterfat. On all milk going through our pool we get one cent a pound butterfat check-off. We get that from producers who are non-members of the association. We market milk for producers who are non-members; we give them the same service as members. Notwithstanding that some of those people never became members of our association, they pay one cent on every pound of butterfat under our contract with dealers. I have no contract with the producer. I made the statement I was in favor of a truce that was a truce. The principal difficulty that caused the whole controversy was refusal of union men working in union plants to handle and process the non-union milk; that was the bone of contention. I didn't say Mr. O'Neal said he would enter into a truce. Mr. O'Neal said they would not agree to a truce on the basis of discontinuing [fol. 215] the picketing of plants. He mentioned Beach as a plant with a picket on, but he reserved the right of picketing any non-union dairy in the city. Mr. O'Neal didn't say there would be a truce; he said, "We will permit Austin Brothers to resume delivery into union plants," and Mr. Clark said, "Does that mean all non-union truckers in Denver?" and Mr. O'Neal said, "Yes." As to my insistence that I would not enter into that agreement unless the pickets were pulled out from Beach, I said, "If we are going to have a truce, let's make it a truce." I was interested in Beach just the same as I am interested in all dairies. They were interrupting the delivery of milk from our shippers into the plants they wanted the milk to go to. The fact that milk was not delivered to union plants was what interrupted the delivery of milk.

As to how long the conference lasted in the Mayor's office, the appointment was for 10 o'clock in the morning. I think it got started between 10 and 10:30 and ended about 12 o'clock and resumed something after 2 o'clock, and I think

we were out of there shortly after 3. The cases were put on file the same day as the conference with the Mayor.

There was a conference in my office on September 1 with Mr. Austin. Mr. Austin wanted to know if the union plants were not permitted to unload the milk what he would do with it. Mr. Austin did not say Mr. Bullard was interfering [fol. 216] with him. Mr. Bullard's name was mentioned; I mentioned it. I knew of the controversy between Bullard and Austin. Mr. Bullard was not soliciting Mr. Austin's customers at that time. I was fearful of it happening. I was fearful because all the farmers are anti-labor, and I didn't want the farmers stirred up any more than they are against the union, and I called him and he came in. I didn't want either one of them to interfere with the other and get this controversy before the farmers because they are anti-labor, and if the story got around over the country, the farmers would get it. As to all of the farmers being anti-labor, "all" is pretty broad. I haven't talked to any farmer that wasn't anti-labor, especially in this particular deal. I didn't say that I was afraid they would become more anti-labor if a union trucker hauled some of the farmers' milk. I said if they went out soliciting, that is one hauler trying to take the milk from the other hauler, that would stir the farmer up against the union. They couldn't talk to the farmer without bringing in the issue. No, it is more than a question of hauling milk, they have picked the hauler and then you inject the union into it. As to whether the farmers are sore at the union, I have already testified that one farmer said if a union trucker came to his place if he couldn't put his milk on a non-union truck he would sell his cows. He made that public before a hundred [fol. 217] shippers. I was fearful that there was danger of stirring up the farmers because a union man went there, and I was trying to head it off. My position is that if a union man like Mr. Bullard went to a farmer and said, "I want to haul your milk," that would cause trouble, so I told Mr. Bullard not to interfere with the shippers. As to what he said, we had a lot of conversation with respect to dealers ordering in or suggesting that he go pick up milk. He made the statement, "You are talking to a union man now." I don't recall all the conversation. They were in the office for probably an hour. Part of the time Mr. Austin and Mr. Bullard were talking together without my being in it, discussing problems they had had, and I don't recall all

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the conversation. I said to him, "I will inform your shippers what you are doing." I would say to them he was trying to throw their milk into union plants, and I didn't want them disturbed.

I testified and I stated in my complaint that I am neither for nor against the union, and I am trying to protect the union and keep from stirring the farmers up. I was also protecting the consumer. At the conference we have been talking about, I have told Mr. Austin, and every one else, to go ahead if they wanted to join the union, but we would not be used to force any one to join. I heard the testimony of Mr. Almhurst the other day. Mr. Alm told me the union [fol. 218] had been after him to sign up and that he didn't want to join the union. His employees didn't want to join the union; and I said, "Well, Mr. Alm, if you join the union we will do all we can to get you the milk just the same as we have in the past." And then he said, "Shall I tell the union you told me not to join the union?" "No," I said, "I didn't tell you that." I said, "We would take the same care of you to the best of our ability on your milk supply." Mr. Alm did say that I advised him not to join the union, but then he contradicted that statement. The record shows what he said; I don't recall just the words. The substance was his being in the union didn't have any bearing on his supply of milk.

(Witness excused.)

Plaintiffs rested.

MOTION TO DISMISS

The Court: The motion being made merely for the purpose of the record, the same is denied at this time and you may proceed to put on your case.

Defendant's witnesses.

HOWARD COFFEY.

Direct examination:

I am Howard Coffey, one of the defendants in this case. I am Recording Secretary of the Joint Teamsters Council and Recording Secretary of Local 537.

[fol. 219] I know Mr. Hall. As to his testimony that he had a telephone conversation with me and his statement

somebody was going to get shot, I never made any statement that anybody would be shot. I made no threats to him of any kind. I have made no threats to anybody at any time. I imagine I was down at Carlson-Frink at the time the union members would not handle non-union milk. I know Mr. Borgmann, and I had several conversations with him.

Q. Did you have any conversation with him where you stated to him, "I will get you by hook or by crook?"

A. My conversation with Mr. Borgmann has been nothing but on a friendly basis at all times.

As to Mr. Hall's testimo-y about my making some remark about stopping women working at the Brookridge Farm, the conversation I had with him was that under the terms of our contract they had fifteen days to join the union. Mr. Hall was in violation of our contract and had failed to notify the union of the employment of these women, and at the end of fifteen days he had failed to cooperate with us in that these women had not become members of the union. I heard what Mr. Hall testified to. I have not at any time said to Mr. Hall that women could not work at Brookridge, or any place else. I heard Mr. Borgmann make the statement that he was told that he had to join the union by hook [fol. 220] or crook. I have had several conversations with Mr. Borgmann. It was all on a friendly basis. The phrase "friendly basis" stricken by the court. I had no such conversation with Mr. Borgmann in which I said I would make him join the union by hook or crook.

I know Mr. Hillmeyer, connected with the Stearns Dairy. I recall his testimony about some controversy I had at the time when the union members refused to deliver his milk. It occurred on the morning of September 7. I heard him testify he was not given any notice. There was a controversy and it was about the type of payment of wages Stearns Dairy would use in the coming year. Mr. Hillmeyer and I had been dickering about that up to the time it was submitted to the War Labor Board. After it was submitted to the War Labor Board, a panel hearing was heard before it. On the morning of September 7, we had been told to get together with Mr. Hillmeyer about formulating any settlement. Every time an appointment was made he saw fit to break it. The drivers wanted the thing settled. I had a conversation with Mr. Hillmeyer that morning (refer-

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ring to September 7). Mr. Hillmeyer wanted to know what the trouble was. I told him the boys wanted the wage question settled. He wanted to know what the demands were. We told him what we would settle for; it was $210.00 a [fol. 221] month wages. The first statement he made was he couldn't do it, and I sat down and talked to him and the final outcome was he agreed to go along and pay the boys $210.00 a month. As to back pay, he agreed they would pay $100.00 per man to cover the back pay period from April 1 to September 1.

As to the Beach Dairy I was down there in the capacity of a picket and I had two or three or four meetings with Mr. Beach. The first meeting was on Monday, September 10. Mr. Christol and myself called on Mr. Beach at the plant and asked him if he would like to sit down and talk about our contract and we had a friendly conversation in Mr. Beach's office or in the plant the morning of September 10 around 10 o'clock. We were in what was formerly a salesman's room. We stood up and talked to Mr. Beach. The conversation lasted around fifteen to twenty minutes. Mr. Beach received us very friendly; he was very calm. I think we shook hands and said, "Good morning." I think we introduced ourselves; that was the first time I had met him. It is kind of hard to say what was said. We introduced ourselves and made our statement that we were there representing the Milk Drivers Union. We told him we had a contract we would like to talk with him about, and he made the statement he was familiar with the contents of the contract, that he had seen it. We talked about different parts of the contract, I think, and at the end of it the statement [fol. 222] was made we didn't have anything he was particularly interested in at that time. As to when the next meeting was, I don't have a clear recollection as to date. It was a day or so after the first meeting, and it was in Mr. Beach's office. Mr. Christol and myself were present. If I remember correctly, Mr. Beach called us down and asked a couple of questions about some phase of the contract. Off hand, I don't recall what it was about. As to the result of that conversation, nothing was gained by either party. Referring to the next conference, I was at Mr. Beach's attorney's office. I think that I recall what that second meeting was. Mr. Beach said he couldn't sign a contract, as the estate was in such condition they couldn't sign a contract until after December 31, 1945. So we told him a letter could

be drawn which would clarify the Beach Milk Company's position and we suggested that we meet in his attorney's office, Mr. Nate Creamer, which we did on the following day. He told me who his attorney was. Mr. Christol, Mr. Beach, Mr. Creamer and I were there. The way I recall the conversation, Mr. Creamer merely stated he was the attorney representing the settlement of the Beach estate, and also made the statement they couldn't sign our contract, it would have to be something else if they did. So we talked over this letter, what the contract might contain. Mr. [fol. 223] Creamer made the statement if we would have this letter drawn and brought back to his office for his approval, he said the union should have such a letter drawn and presented to him. We had the letter drawn and met in Mr. Creamer's office about 12 o'clock September 15, about noon, and presented the letter to Mr. Creamer and he was unable to get in touch with Mr. Beach. At that time he put his initials on the contents of the letter, and so far as the law was concerned, he made the statement there wasn't anything wrong with it. At that time he called Mrs. Beach and so told her that so far as the contents of the letter was concerned everything was O. K. That was in my presence. It seems to me it was a day or two after that until I could get in touch with Mr. Beach to show him this letter. As a result, when we did get in touch with one another Mr. Beach didn't see fit to sign it. Mr. Christol and myself were present in Mr. Beach's plant. The conversation didn't hinge so much as to the contents of the letter as it did around the situation. Mr. Beach made the statement that he had seven shippers that supplied him with a certain quality of milk that, if he signed this contract with the union or this letter, he would lose these seven shippers, because they so notified him they didn't want their milk going into a union plant. He told me that. I believe that is the first time he made that remark to me. We told him we didn't see any [fol. 224] reason for anybody taking such a stand as that. That finished the conference. We had a tentative date on Thursday and for some reason or other the date wasn't kept, but Mr. Beach called soon after that and we met in his plant. Mr. Christol and myself were present. That was on Thursday the 20th. The same statement came out in regard to the seven shippers, and also there was some questions asked about the contract, and in one particular about the men having to join the union, and he was worrying

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about the fact if there were some that refused to join the union he would have to let them go, and we told him that possibility was very remote, that past experiences would disprove such a situation, and that we thought it could be all worked out on a very equitable basis. I believe he asked another question, I don't remember whether it was regarding rates of pay. Mr. Beach made the statement his mother was on the way to Omaha to his brother's wedding and he would get in touch with her and see what she had to say regarding the signing of this letter, as he had made a promise to her, or they had agreed between themselves, his mother and brother, they wouldn't sign anything without the other two knowing about it, and he made the statement he would put in a long-distance call to Omaha and get in touch with her and let us know what the answer was. That was the last time I met Mr. Beach, it was the following [fol. 225] morning the injunction was served. The pickets were out at that time. I never heard anything from Mr. Beach. There were some pickets at Beach's place; that commenced Monday morning, September 10. The picketing was going on during the time we had these conferences. I observed personally how many pickets were there the morning it started. I gave instructions to the pickets. There was only one picket walking a line at the time. The man who was the picket was Ed Hogan. He had a banner; the phrase "Unfair to Milk Drivers Union Local 537" was on the banner. There was only one man walking the picket line. There were four or five boys across the street sitting in the shade. As to what they were there for, our main object was to talk to truck drivers when they came in. I had charge of the pickets at Beach's place. We instructed them as per our agreement with the Police Department, that everything must be on a peaceful, friendly basis. As to whether any of these men had arms or weapons, they did not at any time. The picketing lasted from the 10th of September until the morning of the service of the injunction. It would be hard to say as to whether any of these pickets were on Mr. Beach's property; I believe they were on the sidewalk in front of the place.

I know Mr. Helburg, one of the Austin drivers. I believe he testified we had talked to him. I don't remember what [fol. 226] else he testified to. I had probably three or four conversations with Mr. Helburg, but the last one I distinctly remember was the time he made a statement that he thought

the boys were favorable to joining the union (referring to the Austin drivers), and he asked us for some applications to take to Boulder, and we were to see him the next morning. The next morning we met Mr. Helburg; I don't remember whether it was at Carlson-Frink or not, but we met him and he informed us a meeting had been held in Boulder and Moore and Mr. Austin had instructed the men to stay out of the union.

I remember a union man by the name of Ray Walker. I heard him testify. The first time I saw Mr. Walker, he came to the union office and said he wanted to join the union. He talked to me. That was the first time I had seen the gentleman. We were not charging any initiation fees, it was merely a month's dues. We told him what that was. He knew. He, of his own free will, went out to the front office where the girls are and the girls made a receipt and gave him a dues book at that time, but that was the first time I had ever seen Mr. Walker.

Cross-examination:

My only position in Union 537 is secretary-treasurer. My duties are described in Exhibit B, the By-laws of Milk Drivers and Employees Union, Local 537. There are no [fol. 227] provisions in there for giving instructions to picket. The provision giving me authority to have anything to do with picketing was voted by the membership. It was voted by the members in 1939. I will bring the minutes this afternoon.

The matter of organizing dairy farmers and carriers has been discussed at several meetings. I couldn't say whether it appears in the minutes.

I sent Mr. Walker to the clerk and she gave him a receipt for his dues. That is my signature on Exhibit F. I think I gave him the receipt and took that to the office and she gave him the dues book.

I am recording secretary of Joint Council 54, and I have the minute book in my possession. There are no by-laws of Local 54; we operate under the International constitution. We keep minutes. I had the minute book of that organization in court this week, but I don't have it this morning. I will bring it at 2 o'clock. Mr. A. E. O'Neal is the organizer of the International Brotherhood. I only have his word for it, I never asked him about it. I did not

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see the letter before it was introduced in court (referring to letter of authority from Mr. Tobin to Mr. O'Neal). My attention being called to Exhibit P, which is a copy of the letter to Mr. O'Neal, he appeared in Denver sometime the early part of July. Shortly after he arrived, the union took steps to unionize the non-union dairies. We didn't get [fol. 228] instruction from Mr. O'Neal whenever that should be done. Our local union is operated with local men. At no time did he give me any instructions. He [O'Neal] made his headquarters in the Teamsters Union at 1356 Bannock Street. He has had his office there since he came to Denver and has it there now. I was not with him when he talked to Mr. Lambotte of the Piggly Wiggly stores. The Stearns Dairy situation was submitted to the War Labor Board on the statement, which is Exhibit H, signed by me and Hr. Hillmeyer, also signed by Mr. Hickerson of the Conciliation Service. There was a formal hearing and argument before the Board in the Kittredge Building at which I was present, and it was submitted on written briefs by both sides, and it had not been decided by the National War Labor Board on September 7 when I went to the Stearns Dairy. The meeting at Stearns was about 5 o'clock in the morning. I did not notify Mr. Hillmeyer in advance that I was going to the Stearns Dairy. I was called out there by the boys. I don't recall which one called me; one of them phoned. I think it was Earl Lowrey, and he phoned me from his house about 4 in the morning. He got me at my home. I took Mr. Dinsmore with me. He is business agent of Local 537. Also Ralph Elkins, he is a member that had a day off. He lives in North Denver at 5197 Perry. Dinsmore lives at 1119 South Logan, and I also took Alkire. He lives on Washington Street. We did not all go out [fol. 229] there in my car; Alkire had his own car. I picked Dinsmore up down town. There might have been another one of the members with us; I am not positive about that. I am not so sure that Christol was with us. He lives on 8th Street. The driver that phoned me about 4 o'clock in the morning told me that they wanted this thing brought to a conclusion, this wage situation, and that they were not going to work until it was settled. He said he had talked to the men and they were not going out. I was not expecting any phone call from that man at 4 o'clock in the morning. I knew the situation was pretty restless, but I didn't know anything particular was going to happen that morning.

Then I phoned Dinsmore and Alkire. I didn't say I got dressed and was over there in exactly a half hour; it was approximately that time.

We had a meeting at the union hall the night before I went to Stearns. We had discussed the Stearns situation. We didn't have any arrangements for drivers to refuse to go to work unless this matter was settled. I had talked to some of the drivers at the union hall the night before, and I was not surprised when I got the phone call as I told you the situation was pretty restless. Mr. O'Neal did not sit in on that conversation. I think Mr. Christol was around there. As to how many drivers there were at the Stearns Dairy at that time, I believe all but two were [fol. 230] there. I wouldn't say that it was unusual for them to be there at 5 o'clock in the morning; the majority will go out at a quarter to five and six.

I told Mr. Beach that I would put the pickets on right away. I phoned and I said I had one man, Ed Hogan, with a banner and four or five sitting across the street in the shade. Mr. Charles Lindsey was one of the men; he is in the court room. He is not a member of 537. He works for the Joint Council. He is a union man, a member of Local 452. That union is produce and warehousemen. I did not pay him to work as a picket. We were all at the union hall ready to go when I called for them. I think Mr. Woodward, who is in the courtroom, was also there. I don't know how long Mr. Woodward has lived in Denver. He doesn't work for me. I have known him approximately three months. I have known Lindsey approximately a year. It is their duty to report to the union every morning before they go to work. As a usual rule they go to the union hall before going to work. They are not working on any job; they are working for the Teamsters Union. Woodward is a business agent for the Teamsters Union. Hogan's job is he also works for the Joint Council of Teamsters as a business agent. As to who the other two were, there were four or five in the shade and I think Mr. Christol was there and Mr. Alkire was there that morning. Alkire is not an employee of the union. At that time he was not [fol. 231] working any place. I don't recall anybody else there. I had pickets there from September 10 until the morning of the 21st. On the 11th as far as I recollect, I had one picket who was Mr. Hogan. He was the one who carried the banner most of the time, others spelled him

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off. I said that the men sitting in the shade were there to talk to drivers. After the first day I don't think any of our men were there beside the picket; by the picket I mean the man carrying the banner. When I talked to Mr. Beach I showed him the letter that was O.K.d by Mr. Creamer. I didn't leave it with him because he didn't ask for it.

I know now that Mr. Walker is a farmer, from his testimony in court, and he testified that he delivered his own milk on his own truck. As to offering to return his $3.00 to him, I haven't seen him. The only time I have seen him was in court. Up to date I have not offered to return his $3.00 to him, nor has the union.

Redirect examination:

The controversy between our union and the Stearns Dairy had not been settled on the date of the strike. It was referred back to the union. I think I have the notice from the War Labor Board. It is in my office; I will do my best to bring it this afternoon. Mr. Pixler prepared Exhibit Q. The initials are those of Mr. Nate Creamer, attorney for Mr. Beach. I went to Mr. Creamer because [fol. 232] he said Creamer was the attorney for the estate and any settlement would have to be agreed to by him.

I have not offered to pay Mr. Walker the $3.00. I don't recall your asking Mr. Walker whether he wanted his money back. I believe you asked him whether he wanted to continue as a member of the union, and he said he didn't know. He has not been there to surrender his book or to get his $3.00 back. I am willing to deposit the $3.00 in court if Mr. Van Cise wants it.

Recross-examination:

Mr. Pixler prepared Exhibit Q, and he is not a full time employee of Union 537. He works for the Research Department of the Teamsters Union of the Joint Council, and he is a full time employee for them.

EARL CHRISTOL.

Direct examination:

My name is Earl Christol. I am business agent of Milk Drivers Union 537. I have heard the testimony in this case. I have been here all the time. Mr. Coffey and I worked together quite a bit. We were together at the Carlson-Frink Dairy at the time of the discussion with the trucker from Boulder, I think Borgmann is from Longmont, he is not from Boulder. The conversation was very friendly. Naturally we were trying to sell him a union card or get him to go along and join up with the boys in [fol. 233] the union. He said he was a farmer and he didn't see why he should go along with them. That is about all the conversation. He is a producer and also a hauler. He has a PUC license issued to him, and he hauls other people's milk. He was not the one who wanted some applications. That was one of the Austins. The name of the man from Austins was Lee Helburg. We were down at Carlson-Frink's talking to the boys. We talked to Mr. Helburg on two or three occasions, and he said, "I think the boys are all going to go along," and we gave him an application, and he asked for three or four more to take to Boulder. I am talking about the drivers for Austin Brothers. Mr. Helburg was a driver for Austin. We gave him some three or four extra applications to take to Boulder, and the next morning we met him and he said, "It looks like the boys are not going to join the union. We had a meeting with Mr. Moore and Mr. Austin and it looks like they are not going to go along." As to the reason, the only thing was that he was informed from the employer and Mr. Moore not to join the union. He seemed to me very enthusiastic about going along with the boys up until they had that meeting. I have had no further conversation with him since then.

I have seen Mr. Hall around the Brookridge plant, but I have never had any conversation with him. I was not present when Mr. Coffey had any conversation with him. [fol. 234] I was up at Boulder at the time of the picketing of Austin Brothers. We were at the garage, but I don't know just what the street number is where they keep their trucks. We were parked in the street alongside the garage. There were six cars in Boulder. I think there were two men to the car. I think that was on Thursday or Friday,

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the 6th or 7th of September. We went up there to see where they were diverting this milk to. We thought they were converting it into the condensary in Brighton. Our purpose was just to see where they were diverting this milk that was being diverted from our union dairies. That was the only occasion we went up there. As to what we did, we followed the trucks around when they left the garage to see where they took the milk to find out where they delivered it. We didn't talk to any of the drivers. They didn't talk to us. We were not on Mr. Austin's property, and we didn't carry any picket sign. Our trucks were there about an hour. We got back to Denver around 10:30 or 11 o'clock. As to whether there were any policemen there, there was one who talked to some of the boys, but I wasn't there. We parked on the east side of the garage. I didn't have any conversation with the policeman; he never interfered with me in any way. I was down at Mr. Beach's place. I heard Mr. Coffey testify about that. I was at two or three of the conferences with Coffey. I would say Mr. [fol. 235] Coffey's testimony is substantially correct. I was one of the parties that was on the other side of the street at Beach's. I don't think we were there over about a half or three-quarters of any hour after the picket was placed there on the first day. After that, to my knowledge, there were not any men on the other side of the street. There was just one picket, and I think his name was Hogan. I was at Beach's at several conferences, and Coffey was there at those conferences. At that time there was a man walking up and down with a sign. His name was Hogan. At that time there were no men across the street; they were across the street only on the first day. In any conversation I had with Mr. Beach, I don't believe I ever stated to him that I was going to run him out of business. I never made no statement to the effect that I was going to run Mr. Beach out of business. I did tell Mr. Beach we would ask all organized workers to support us until this was settled. Mr. Beach didn't make any statement as to that.

Cross-examination:

There was a station wagon at Boulder. It belonged to Local 13, it is the Teamsters Union. Harry Schudeman drove that car. I couldn't say who was with him. There was one boy in the car with him. Not to my knowledge were there more than two in that car. I don't know the name of

[fol. 236] the man with him. I did not have my car there. I was riding with Danny Ryan. He belongs to Local 435, Teamsters. I think Mr. Coffey was in Niwot. Ryan is secretary-treasurer of Local 534. Schudeman is business agent in the Teamsters Union. There were two cars at Niwot. I couldn't say who was with Mr. Coffey. I do not know who the others were who were at Niwot. As to who was in the third car at Boulder, that was Mr. Lindsey's car. He is a business agent out of the Warehouse Council. It has no number; it is a Teamsters' group. It is a different branch than Council 54. I couldn't say who was with Lindsey. As to the fourth car I think that was Mr. Guy Downing. (At this point, upon inquiry, Mr. Lindsey and Mr. Downey as being in the court room.) I couldn't say who was with Downing. The fifth car was Dinsmore. He is business agent for Milk Drivers 537. I couldn't say who was with him. (Dinsmore was identified as being in the court room.) The sixth car was Mr. Pixler. I couldn't say who was with Pixler. I have known Mr. Schudeman for eight or ten years. I have known Ryan that long. I have known Lindsey for two or three years, Downing for three or four years, Dinsmore for four or five years. They have been in Denver for sometime. My nickname is "Spider." As to how I got that name, some one just happened to hang it on me, and I am still spinning that web.

[fol. 237] GUY E. DOWNING.

Direct examination:

I am Guy E. Downing, connected with Union 17. I am president. I went to Boulder on the same trip that Mr. Christol testified to. I think there were six cars there. I know all the men who were occupants of the cars. I don't know as I could name them in individual cars, but I do know all the men that were there. I was asked to go to Boulder that morning to follow these Austin tracks, not in any way interefere with them or cause any violence, just follow the men and find out where they delivered the milk, and we did that. We did not interfere with any of them. I did not talk to any of the Austin drivers. I did not enter the Austin Brothers' premises. I talked to no one myself. I didn't interefere with any one and none interefered with me. We got back to Denver at 12:30. John Teel and John Lock-

hart were in the car with me. That was the only occasion I ever went to Boulder to find out where the milk was being diverted to. As to how long I was gone, I left Denver about 4 o'clock, and we were back about 12:30.

Q. Did these cars go together or did they separate and follow different trucks?

A. When we left Boulder we separated. I was about the first man out of Boulder, I think, and the first truck that [fol. 238] left I followed him and stayed behind all the way into Denver as he picked up his milk.

The trucks separated.

Cross-examination:

John Teel belongs to Union 17. He is business agent. Lockhart belongs to the bakery drivers No. 219. He is business agent. They were all business agents up there that day. Mr. Teel is not in the court room, nor is Mr. Lockhart. I had three men in my car. I did not take the number of the truck I followed. The Austin trucks have a PUC number; I didn't take that. We followed the truck wherever it went to pick up its milk and stopped on the highway while it went to the milk house and then started when it came out. I didn't make a written report on where they delivered their milk. We made a verbal report to Mr. O'Neal and Mr. Coffey. Mr. O'Neal is the agent of the International Brotherhood, and he has told me he was here on the International Teamsters Union business. I wouldn't know whether he has been sitting in on these conferences about the milk situation. I have not participated in many conferences with Mr. O'Neal about the milk situation. This is the only one. As to what he told me about going to Boulder, they asked for volunteers. We were asked to go to Boulder to follow the trucks. That was the day before, and this was at the head- [fol. 239] quarters of the Teamsters Union on Bannock Street. I have my office there. As to who was present at that conference the day before we went to Boulder, Mr. Coffey, Mr. O'Neal, Mr. Christol, Mr. Dinsmore, Mr. Teel, Mr. Lockhart, Mr. Pixler, Mr. Lindsey and myself were there, and they are all officers of various unions and most of them are business agents. As to what Mr. O'Neal told me about what we were to do when we got to Boulder, he told us he wanted us to go to Boulder, meet the trucks as they left the garage, not to talk to them, not bother them

in any way, just follow and see where they were delivering this milk. He did not go to Boulder with me. I didn't go to the office before I went to Boulder. I didn't report back to him after I got back as I had other work to do. I reported to him in the evening. I told Mr. O'Neal where the milk had been delivered, that part of it was delivered out here on Wadsworth and 38th. There is a little dairy there; I don't remember the name. And part was delivered to another dairy, the name I don't remember. The truck finished unloading, however, at Royal Crest. Wadsworth and 38th is one dairy, the next was about First or Second on Bannock, and the next was the Royal Crest in South Denver. As to whether he had milk left on the truck, we didn't go to the dairy, we sat at the end of the alley and from there it looked like he had finished, so we left. We took a note of [fol. 240] the number of cans he left at Wadsworth and 38th; I don't remember how many there were. I just came to tell them that night the places they went. When I made my report to Mr. O'Neal that night, I don't recall how many were there, but I know there was quite a number. There were others reporting to Mr. O'Neal the same time I was there. We had agreed to meet that evening and make our reports on what was done. We met about 4:30 or 5 o'clock. I don't know whether Mr. O'Neal or Mr. Coffey was in charge of that particular activity, but Mr. O'Neal gave us our instructions.

Mr. O'Neal has had his headquarters in our Bannock Street offices ever since he got here early in July. Our union has jurisdiction over the local transfer companies and over the road operations of freight lines. We go outside of Denver in our jurisdiction. We cover teamsters going out of Denver on various roads. In addition to the names of the men Mr. Christol gave, I think of one other man. His name is Stanley Sans. I think that covers all the men. He was business agent for 452. He isn't a business agent any more. I do not know who were in the cars at Niwot.

Redirect examination:

I was asked about the men that went to Boulder, and I said they were officers of various unions. It is true that the [fol. 241] unions I referred to were all Teamsters. There were no members of Retail Clerks, Bricklayers, or any other union.

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EDWARD D. WOODARD.

Direct examination:

I am Edward D. Woodard. I am business agent of Local 17, Teamsters Union. I had occasion to go to Boulder in the early part of September in connection with the Austin garage. I went at the request of my superior, Mr. Downing, the gentleman who has just testified. I went in Mr. Ray Kiegley's car. He went along. He is connected with the same union; he is secretary-treasurer. We joined the other cars at the Austin garage on the street next the Austin Brothers garage and waited until such time as they began their pick-up route of milk, and as Mr. Downing said, we followed a designated truck to its destination to determine where they finally got rid of their entire load of milk. I did not talk to any of the Austin drivers and they did not talk to me. As far as Mr. Kiegley and I are concerned, we did not talk to any one else. I saw a policeman there. He did not talk to me. I did not interfere with any of Austin's drivers, and they did not interfere with me.

I was at Mr. Beach's place in September. As to what I was doing there, I was a member of the group who were [fol. 242] down there at the time the picket line was placed on Beach's Creamery. As to what I mean by "picket line", the general definition of picket line is the act of placing the "unfair" sign in front of their place of business. It takes one man to constitute a picket line. Being asked to describe what I saw there, Mr. Hogan was in the act of walking the picket line, if you choose to call it that, carrying the picket sign. He was on the 22nd Street side of the Beach Creamery. He was on the sidewalk along the side of the building. That was the sidewalk that was open to the public. No one else was on the sidewalk. I was across the street. Mr. Lindsey, Mr. Christol, Mr. Teel, and another man were across the street. As to what I did, I did nothing. I was there the same as the other men to talk to any drivers who came in as to how they felt about joining the union, that is the drivers who came to Beach's place. Personally, I didn't contact any. I was there about two hours. That was the first day of the so-called picket line. I did not return there; that was the only time I was there.

Cross-examination:

It wasn't a picket sign for Union No. 17; it had 537 on it. I don't believe Mr. Coffey was there. I went to Boulder at the request of Mr. Downing. I am 6 feet tall and I weigh 170 pounds. When I said I followed a designated truck out [fol. 243] of the Austin garage, I meant we took a position and each car was taking a truck as it came out of the garage. It depended on what order we were in. As to how we knew we were to follow a certain car, we left that to our own observation.

CHARLES F. LINDSEY.

Direct examination:

I am Charles F. Lindsey. I am organizer for the Western Warehouse and Produce Council, which is connected with the Teamsters Union. It has no number. I had occasion to go to Boulder in the early part of September. I went in my car with Mr. Burk. We went there to follow the trucks of the Austin drivers. I didn't follow any trucks. When we got over there we didn't follow anything. As to what we did, we went to Brighton and Fort Lupton to see if the Austin milk was going into either of those dairies, but we didn't follow any trucks. After that we came back to Denver. I did not talk to any Austin drivers, nor did they talk to me.

I was one of the gentlemen that was down to Beach's Dairy at the time of that controversy down there. I don't remember the exact date I went there; it was the same date as the others. I heard the testimony of Mr. Woodard and Mr. Downing, as to the number of pickets there, and that is substantially correct.

[fol. 244] Cross-examination:

I was at the meeting at union hall the night before we went to Boulder. We went to Boulder. I said Mr. Burk was with me. I did not follow one of the trucks to Brighton or Fort Lupton, didn't follow any truck at all. In Brighton we went to the Northern Colorado Dairy. I couldn't tell you whether it is a union or non-union dairy; I think it is non-union. We waited there a while until Austin's trucks drove up. It was approximately 9 o'clock

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when we got there and around 10 or 10:30 when we left. All we did was just sit there and then we went to Lupton to the Columbine Condensery. There was no Austin truck there. We waited there about an hour and came back to Denver, but I didn't report to Mr. O'Neal. I went to the meeting that afternoon about 4:30 or 5 when the other men were there, and we all made reports at that time.

Burk is secretary-treasurer and business agent of Local 452. The name of it is Produce and Warehouse.

I went to Beach's the first day the pickets were put on. As to where the pickets assembled, we were not pickets. I don't remember for sure where we assembled first. I was not at the union headquarters before we went to Beach's; there may have been somebody there. We had instructions to be at Beach's at 10 o'clock that morning. The instructions were left for me when I came into the office in the [fol. 245] morning. I don't know whether the others were told to be at Beach's or not, but I was. I did not go over there with Mr. Coffey and Mr. Christol, and they weren't there when I got there. I don't know whether they were inside talking to Mr. Beach when I got there. My usual time to report for work is 8 o'clock. My best recollection is that when I got to work I was told to be at Beach's at 10 o'clock. I stayed there until about 6 that evening. That was the only day I was there. The first day I talked to some of the drivers for the carriers while I was there. I talked to probably three or four, and I say I wasn't a picket, I was just a talker and I claim if I am talking to some one in the interest of the union I am not a picket, but I would talk to drivers when they came up with milk. I think I talked to them by myself that morning. None of them were Austin drivers. Some of them were drivers for Rein. They had joined the union. We didn't tell them not to unload; we told them there was a picket there and they left. I also talked to the Fuller Truck line. Fuller was not a member of the union at that time. I told the Fuller driver there was a picket there. They did not unload. As a result of my talking to the Rein driver and the Fuller driver, they didn't unload their milk and they went away with it. As to the other men that were over there in the shade with me, they would [fol. 246] talk if the occasion came up. As to who were there in the shade, Woodard and Teel was the only two I can remember. There was one more there. The sign didn't

have Union 17 on it, I am sure of that. I have held my position as organizer approximately sixty days.

Redirect examination:

I was at Beach's the first day, and I was there on other days. I went there, back and forth and up and down. I drove by there the next day, but I didn't stop. I had no duty there. I was there on my duties for one day. I said nothing else to drivers except what I have stated.

Recross-examination:

I did not go back just from curiosity. I have been living in Denver continuously nine years. I am 5 feet 11 inches in height and I weigh about 152 pounds.

FRANK J. BURK.

Direct examination:

I am Frank J. Burk, secretary-treasurer and business agent for Local 452, that is produce, ice and cold storage. It is connected with the Teamsters Union, affiliated with the Joint Council.

I was in Boulder with Mr. Lindsey. We didn't follow any of the trucks. We drove from Boulder to Brighton. We stopped there at the dairy to see if any Austin trucks came [fol. 247] in with milk. They didn't and we drove to Lupton to check there and then came to Denver.

I did not participate at Beach's in connection with the picketing there. I was not there at all and know nothing about that.

Cross-examination:

As to being at the meeting at the union headquarters the day before going to Boulder, I was asked to go up there. I didn't make any report after I went to Boulder and Lupton. I am 5 feet 11 inches tall and weigh 160 pounds stripped. As to who told me to go to Boulder, it was just a general discussion there. They were all going, so I volunteered to go with them the day before. O'Neal, Coffey, Christol and the rest of us were at that meeting.

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HOWARD COFFEY.

(Recalled for further examination.)

Cross-examination:

I have the minutes of Local 537 in court with me. I said earlier there was some record giving me authority. That meeting took place somewhere in 1938 or 1939 giving the secretary of the union certain authority, which I was not at. I don't have the minute book and don't know where it is. I am also business agent and secretary-treasurer of Local 537. I don't have the minute book of 1938.

[fol. 248] At this point, on motion of the plaintiffs, all reference by the witness to his minute book and authority to picket was stricken.

We hold meetings by the by-laws twice a month, and this is the regular minute book of Union 537. It should show all the meetings between July 1, 1945 and October 4. I don't write it. I don't have charge of that book, but it is the official minute book. Pages in the book marked for identification as Plaintiffs' Exhibit V.

Q. I am asking you, Mr. Coffey, if at the meeting of July 5, 1945, this is not stated:

> "Stearns Dairy case has been before the Contracting Commission Panel and is now in panel's hands for a decision."

A. That is right.

It is also stated: "Complaints at Meadow Gold on unloading will be handled in the next few days." Meadow Gold is a dairy; it is a union dairy. There is nothing in the minutes of July 5 that in any way refers to union or non-union dairies or carriers or farmers-producers, or picketing in any manner in connection with the milk controversy. My attention being called to the July 19 meeting, the following appears there: "Brother Coffey announced that we should get an answer on Stearns case this week-end." We had hopes of a decision from the National Labor Relations Board, and that is what we meant by an answer. That per-

[fol. 249] tains to city drivers exclusively, has nothing to do with milk drivers. I have a statement that plans to organize milk drivers was discussed, that is the carriers. Mr. O'Neal was not at that meeting. We made our plans to

reorganize the milk haulers. There was no vote taken by the members. In the minutes of August 2 this appears: "Meeting of W. L. B. panel was postponed to August 11th. Stearns case should be heard and settled soon," and then there appears this statement: "Our new international representative, A. E. O'Neal, addressed the meeting and explained the need of co-operation of all members in organizing other dairies." So at that time we took up the question of organizing the non-union dairies. The discussion was not started by Mr. O'Neal. It has been discussed in our meetings many months back. I was present at the meeting when it was discussed. Then there appears in the minutes: "Business Agent Spider Christol was introduced to members." He was hired as a business agent. There is nothing in that meeting showing anything on this milk situation, and then referring to August 16 it is stated: "All members were asked to do all they could to stir up interest on milk industry." It doesn't show in the minutes that any vote was taken to organize anybody on the milk industry. It is correct that there is no minute shown in the book between August 16 and September 20, but the following appears on September 10: "No minutes were taken at [fol. 250] last meeting because none was read." It appears in the minutes that "Brother Coffey reported on picket line at Beach Creamery and announced no milk would go into Piggly Wiggly stores." It is correct that the "Almhurst Dairy signed union contract and drivers will go on commission basis," and it appears also that the "Stearns Dairy contract settled on flat salary at $210.00 per month. Drivers will get back pay." It also appears that "Coffey reported on meeting with the Mayor, and it it right that there is no showing of any vote by the members."

The minute book of Joint Council No. 54 is here in court. It is not a local union; it is a joint council of the Teamsters. Book marked for identification as plaintiffs' Exhibit W. The book marked for identification as Exhibit W is the book we were just talking about. The only meeting in July is the minutes on page 131 as a meeting of July 24, and it shows under that date: "International Rep. A. E. O'Neal was introduced and made a fine talk." On page 132 the reports are made by different locals to the Council, and under 537 it is correct that it is shown: "Local union now preparing to organize country haulers." That meant the carriers. I guess there was a special meeting of the Joint Council on

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August 14. That shows that International Representative Einar Mohn and O'Neal and V. P. Dave Beck were present. That is Dave Beck, International Vice-President from [fol. 251] Seattle. Mr. Mohn is from Los Angeles; he stayed that night. Mr. Beck stayed over night. The book shows that "President Kingsley introduced International Representative O'Neal, who is stationed in this area. Brother O'Neal said he was here to help all the local unions in the area in any way possible." It is correct that the minutes show: "International Dave Beck made a nice talk in regard to work in the new area and what was expected." Our next meeting was August 28; that was a report from Local 537, "Organization work progressing very well." We had no meeting of the Council in September.

Since the movement to obtain the unionization of the carriers started, the agents of 17 have signed up Guy Orlando Anderson of Castle Rock, also Barnhill Truck Lines. That means they all became members of one of the Teamsters Unions since August 15, 1945. Byers-Denver Truck Line, and Colorado Rapid Transit also joined Local 17 since the drive started. Carlson Milk Transport, Franktown Truck, Foster Truck Line, L. W. Lang, Alex Laudham, Manker, Charles Peterson, Frank Pless, Fred Rein, F. J. Rein, and Schwab Truck Line also have joined the union, but Swena Truck Line didn't join at the start of this. That contract has been in existence for some time with Local 13. Grant Vail has become a member since August 15.

[fol. 252] Redirect examination:

We have an Executive Committee in the Dairy Workers Union. The Executive Committee passes on questions that were involved in this dispute. I don't know the action that was taken with respect to Beach and with respect to not handling non-union milk to union dairies by the Executive Committee. No minutes are kept by the Executive Committee. That is composed of the officers, seven officers. There have been meetings of the union and men coming in about their duties right along. Nothing has been brought to my attention and I have never heard, either verbally or in writing, of any protest by any members of the Dairy Union about the activities of the union in trying to organize the non-union dairies.

Recross-examination:

Locke Thrasher is president of our union. Carl Wolverton is trustee. Walter Roe is a trustee and Paul Dinsmore is a trustee and Charles Gilbert is recording secretary and Roy Mauck is vice-president, and I am secretary-treasurer, and we are all members of the Executive Committee of 537, and we have power to transact the business of the union between meetings. The membership transacts the business at the meetings. It is not necessary for any actions of the Executive Committee to be referred to the members to vote. [fol. 253] No actions of the Executive Committee have been referred to the members to be voted upon. The power is given to the Executive Committee to do as it wants at any time. They have, too, the power to carry on business between meetings. As shown by the minutes nothing on the milk situation has been referred by the Executive Committee to the membership. It has been discussed, as shown on the minutes. The minutes do not show any action of the Executive Committee having been referred to the membership.

HARRY SCHUDEMAN.

Direct examination:

I am Harry Schudeman, business agent for Local 13. I was in Boulder at the time testified to by other gentlemen. Off-hand I do not know how many men were there; there were about six cars. I did not follow any of the trucks. I was sitting there on the street in front of Austin Brothers garage. I went there with the intentions of following a truck. I didn't follow any because there was none to follow. I saw a policeman there. He drove up and asked what we were doing. I told him we came out to follow the trucks to see where they picked up their milk and where they were taking it to. He said they had a call. I said there was no violence there. And there would be no violence. I was not at the Beach plant when the picket was there. That is all I know.

[fol. 254] Cross-examination:

I did not have to drive to Boulder in my own car. I was in Teamsters Union No. 13 station wagon. There were two in the station wagon, Stanley Sans and I. I didn't follow

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anybody out. I waited around there and *and* then returned to Denver, and that is all I know about it. I am 5 feet 11 inches tall. I weigh 190, and I am 31 years old.

NORMAN C. PIXLER.

Direct examination:

I am Norman C. Pixler, research director of the Joint Council of Teamsters 54. I have been employed as such eleven months. I went to Boulder on the occasion mentioned. I drove my own car. No one was with me. When I got there, I located the Austin garage and stopped there, and then went on down the road and directed Danny Ryan to come up there, and by the time I got back up there there were three other cars and we all stopped and got out in the road and were talking. At that time there were no drivers and no activity around the Austin garage. I waited at the garage along with Harry until we were certain the last truck had gone out of the Austin garage, and to my knowledge only three went out. At that time we went to Howard Cafe, had breakfast, and drove back to Denver.

I was not at Beach's place. I was there the same day I [fol. 255] went to Boulder. There was no picket at that time. That was the day Paul Dinsmore picked up one or two trucks coming in. He only went from Niwot and he picked up one that day. I did not talk to Mr. Beach. I was there when Mr. Coffey asked for Mr. Beach and the girl replied that Mr. Beach was not available and we came out. That was the day before the picket was put on. That was the last time I was at Beach's. Mr. Coffey and I visited several of the Piggly Wiggly stores; that was on Thursday morning September 20. We contacted the first Piggly Wiggly store in the 200 block on Elati Street. I believe Mr. Ferguson was there. I was with Paul Dinsmore, and after waiting for the manager we introduced ourselves to him, and the substance of our conversation was to the effect that the milk drivers were having a dispute with the Beach Milk Company and this matter as yet had not been settled and that as a customer of the Beach Milk Company we would like to have him use his good offices in an effort to aid us while Beach ironed out his matter with the union. The next Piggly Wiggly I went to was the one at Bayaud and South

Broadway. I don't know the manager; he is not in court. The next place was the 500 block on South Pearl. The manager testified here. I heard his testimony. His name is Howard Allison. We said to him the same in substance as to the manager of the Elati Street Store. He asked us to step out, and he called Mr. Beach at that time, and he came [fol. 256] back after talking to Mr. Beach and said the matter had not been ironed out; and the substance of his conversation was to the effect that it would leave him very hard up without a source of milk supply. We asked him for cooperation. We visited other managers of Piggly Wiggly stores that testified here. We talked to the one in the 1400 block on South Pearl, Cobert Laws. The conversation with him was the same in substance as with the others except that he said he didn't have authority to do anything and asked us to drop back and talk to the owner, who would be there about 12 or 12:30. We did not do that. We went to other managers who testified in court; the one on East Alameda and Downing Street. I don't know his name. The conversation with him in substance was the same as with the others.

Cross-examination:

I am a law student, and Mr. Dinsmore was with me when we called on William White in the store at 1211 East Alameda. We didn't tell him, to my knowledge, at that time that if they accepted milk from the Beach Milk Company we would throw a picket line around that store. I wouldn't testify whether or not that was stated by Mr. Dinsmore. I was in about the first ten minutes of the conversation, Mr. Dinsmore had. We had two or three sections of the conversation. Mr. Dinsmore was talking to three or four employees and I was out in front waiting for my daughter. [fol. 257] I didn't hear all the conversation, but I did hear the conversation that we were having trouble with Beach, and what else occurred I do not know. I never heard Mr. Dinsmore tell him he would throw a picket around the store if he accepted milk from Beach. He didn't call Mr. Lambotte in my presence.

I was not in charge of the movement at Boulder. I did go out and give some instructions as to where the garage was, and I found the garage and I drove down to the main highway in Boulder in an effort to advise any of the six

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cars that were coming, because I was the first one into Boulder, and I picked up Danny Ryan and told him where the garage was. I was in and out of the meeting at the union hall when the plan was made. I believe Mr. O'Neal was at the meeting. I didn't report back the next afternoon as to what occurred at Boulder. I was not at the meeting at 4:30.

I was the representative of the union before the National War Labor Board on the Stearns case, and I conducted the argument for them. I was not at Stearns at 5 o'clock in the morning when Coffey was there. I didn't have anything to do with that with the exception I did know the union members that were working out there—only insofar as I prepared the dispute case and I argued it, and it was some three months and we were waiting for a final report. As to the National War Labor Board told me two or three [fol. 258] days before that he expected to have a final report the following Saturday, but he had told me the same thing several times before.

Redirect examination:

Paper marked for identification as Defendants' Exhibit 4. Exhibit 4 is a letter dated August 18, 1945 from Dwight Spencer, Disputes Director of the Ninth Regional War Labor Board. Exhibit 4 offered in evidence and admitted.

Recross-examination:

This is a letter which the War Labor Board sent to both sides of the controversy. This suggests that collective bargaining be resumed with or without the assistance of a Board representative. I knew your firm was a representative of Stearns Dairy before the National War Labor Board. I did not, as a representative of the union, make any effort to get in touch with your firm after this letter was received. The dispute was not submitted to arbitration after the letter was received. I believe there was collective bargaining after the letter was received between Mr. Hillmeyer and Mr. Coffey. I didn't specifically refer to the 5 o'clock-in-the-morning meeting. I believe Mr. Coffey, from what he said to me, had discussed it with Mr. Hillmeyer on several occasions. There was no final order or final report by the National War Labor Board. We haven't [fol. 259] any right of appeal. The only correspondence

relative to it was the agreement between Mr. Hillmeyer and Mr. Coffey. I drew it up and took it down to Mr. Hall of the Colorado Employers Council. I didn't bring that to you. Mr. Hillmeyer told Mr. Coffey to take it to Mr. Hall. I was not there. I don't know from my own knowledge what he told him. I was employed by Mr. Coffey, and in those affairs I usually follow what I am told to do. I didn't state anything to you about taking that to Employers Council. I believe the amendments state both parties were to notify the National War Labor Board. No issues were drawn prior to the letter I took to the War Labor Board that morning. That issue was whether the drivers should be paid on a commission basis or a salary.

Redirect examination:

I have been asked several times if I brought that letter to Mr. Van Cise, and I stated I did not. As to why I didn't, in the first place, in this dispute we had with the Stearns Dairy Company, the Stearns Dairy Company went there with lawyers representing the Colorado Council. Mr. Van Cise was at none of those meetings. The stipulation setting forth the issues in dispute which was offered in evidence here went through the Conciliation Service and served by the War Labor Board—we got the notice, and as to preparation of briefs at that time, Mr. Hall told me Mr. Van Cise [fol. 260] and Mr. Robinson were handling the dispute briefs for them. We received copies of it; they argued the case with Mr. Hall sitting there as an observer, and I believe he also offered many notes. That was the history prior to the dispute. Mr. Coffey is one of my bosses; I work for about twelve of them. I told Mr. Van Cise I am a law student, and that is right; I am in my second year. When I didn't take that to Mr. Van Cise, I didn't mean any disrespect to him.

Paul E. Dinsmore.

I am Paul E. Dinsmore. I work as business agent for Milk Drivers and Dairy Employees Local 537. I was not at Boulder on the occasion of the picketing. I was at Niwot. I did nothing at Niwot; I just followed a truck. I went up there about 6:30. Ralph Alkire was with me and knew this driver out west of Niwot. He had some friends there and knew where this driver lived. We drove by his place and

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he was just coming out to get in his truck to make his run. We drove down the road, turned around and followed his truck. We followed him on his course over his run around Niwot and north and east of Boulder. We stayed an equal distance behind him and we said nothing to him and he said nothing to us. Our purpose was to see where his milk was delivered.

I was not at Beach's. I had a list of witnesses and I did go to several Piggly Wiggly Stores. I was not here [fol. 261] when the managers testified. Mr. Pixler told the stores we went to. We stopped at the 200 block on Elati. Then we went to the new store at Virginia and South Broadway, and went over on South Pearl. The name was White on South Pearl. He told me his was a union store and all of his employees were union and that he believed in union principles. He wanted to know what we wanted, and I said we were having a little grievance with Beach Dairy and asked if he would go along with us. He said he didn't know, he would call the manager, and I suggested that he call Mr. Leonard Beach and tell him we had been out there to see him. And the same thing took place—no, it didn't—at 1400 South Pearl, we didn't talk to the manager. We were asked to drop back about one o'clock and we didn't drop back because we had other errands to do, and came back to the office. We visited six places that day. The conversation was about the same at each place.

Cross-examination:

I don't know the name of the man at Niwot. He was just a driver. Mr. Alkire had some friends there, he was with me. I found out where the Austin driver lived. I went for the purpose of following the Austin driver. There are two Austin drivers there. Mr. Coffey followed the other one. No one was with Mr. Coffey. I am 6 feet 1 inch tall and I weigh 180 pounds. I am 38 years old. I followed him around his route all the way into Denver. I was [fol. 262] following him to see where his milk was delivered. We wanted to see whether they were diverting this milk into union dairies. We came in while the meeting at the union hall was going on the day before. They asked for volunteers and we volunteered. I forget who all was there. I don't remember whether O'Neal was there that night or not. I think it was around 4:30; that was before we went

to Boulder. Our instructions were to follow the others and to have no dealings with the driver. Our instructions were to find where the Austin milk was delivered and that is what I did. After Roth finished his course an airplane flew around above me. Mr. Austin, I believe it was, pilots a plane, he came to see what was going on. He finished his course, went back to Mr. Austin's place and picked up some cans and then he took off northeast. He delivered some to one of the other drivers on the way in, and one driver went one way and he came into town. That was Broomfield or Lafayette. When he came to the city limits he went to the Berkeley Dairy, which is right off of Federal. From there there was another truck with him. The other truck joined him at Broomfield. I followed Jake, and the other truck left and came down Wadsworth. There were three of them there. After he left Berkeley he went to the Beach Dairy and I waited across the street. From there he went to New Reliable, both trucks together, I don't know why they stayed [fol. 263] together, I guess they were scared about something, but there was nothing to be scared about. They kind of looked as if they were scared. After we left Reliable they drove to Dairy League, that is on South Pearl, and from there they unloaded their final load and drove to Almhurst and that is where we left them. I went and had dinner, I was getting hungry. Roth was on all good roads. It wasn't on the main paved highway all the time, but it is a good road. I noticed the airplane flying overhead while I was going around there. He swooped down, it was a good thing there were no trees there. We didn't know what he was going until we found out here in court.

EDWARD F. HOGAN.

Direct examination:

I am Edward F. Hogan. I was at Beach's Dairy in connection with the picketing. I was carrying a picket sign. We started the 10th and I was down there until the injunction was issued. On the 10th as to how many men there were there, I believe the number that the other gentlemen gave during the course of the trial is right. As to who carried the banner besides me, there was just one man who relieved me when I went to lunch or had other business to take care of. The men on the opposite side of the street

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were there a while, then they would go and come back. They were not there the second and third days to the same extent. [fol. 264] As far as the third day was concerned, I was there alone. From the third day on there was no one there except myself, and I carried the sign. The inscription on the sign was "Unfair to Teamsters Local Union 537." I might have talked to people about the weather, but not about the controversy. Some of the men approached me from inside the plant.

Cross-examination:

My job was to carry the sign. I got there around 8:30 and left approximately 5 to 7 o'clock in the evening. The first day we were there until about seven; after that, it was 4:30 or 5. I would say there were some milk trucks there as late as 3. As to talking to the truck drivers, I talked to some about the weather or the state of the union. I did not ask them not to unload. After the first day it was more or less known. I wouldn't say that after the first day union trucks did not go there. I didn't talk to the drivers. Possibly the first day some of the union men did talk to the drivers. My job was to walk up and down with the banner and pass the time of day, and nothing else. My job in the union is business agent of Joint Council of Teamsters 54. I don't know for sure how many business agents there are. As near as I know, I am possibly the only one that works out of the Joint Council. I believe [fol. 265] 537 has about three business agents, they are Coffey, Mr. Dinsmore and Earl Christol.

As to stopping the coal truck from the Rio Grande Fuel Company, I never stopped any one. Any one who wanted to go there, they could go there. The driver of the Rio Grande Coal Company saw the picket sign and I explained what it was. I answered his question. I saw the man with the coal truck drive up there, and he didn't unload his coal at that time. The place to unload the coal was in the alley, and I saw him come up the alley. I was walking right up the sidewalk and down the alley. At various times I made a circle or semi-circle of the building. I walked on the sidewalk on 22nd Street, and sometimes I might have walked on Arapahoe. I was walking on three sides of the building. I was in the alley at the time this man came in with coal. His truck stopped and I believe he was looking around to

see where to deliver it. He saw the sign and wanted to know what it was about and I told him we had a picket line there. He said he just came into town that day and I explained the best thing for him to do was to go to his own union. I never told him not to go through the picket line. He understood that if he was a union man not to go through the picket line, he could read the sign. He didn't unload his coal; he did about twenty or thirty minutes later. That was around 10 or 10:30. I believe two of the representatives of [fol. 266] the company were there. I talked to them. They could see I had a picket line there; they had heard of that before. I never made any statement, "I am the picket line." They could see the sign there and they made their own remarks. I talked to the two representatives of the Rio Grande Fuel Company. I never told them I was carrying the sign, they could see it. I told them the best thing for them to do was to get in touch with the boys, representatives of Local 13, because of the particular driver of the coal truck was a member of their Council. That was all the talk I had with them. I never stopped anybody that wanted to deliver milk. I never talked to anybody about not delivering milk there.

As to whether I know Mr. Austin, I recognize one of the fellows as the driver. Mr. Linton Austin was unloading his milk. Any conversation we had was when he was already unloading his milk. He didn't come in there until about the third or fourth day. They knew what they were doing there. As to what talk I had with him, just small talk, possibly about the weather. As to whether I told Mr. Austin that he ought to get all the Austin drivers and talk to the union, I possibly made a suggestion that it might be a good idea to hear the union side of it.

I found out the bricklayer working on the boiler house at the Beach dairy was a union bricklayer about a week after [fol. 267] the picket was on. I never found it out until the business agent for the bricklayers came in. I don't know his name. I talked to him; I told him the fellow had been working there a week and I figured he was a union bricklayer. The union business agent talked to him and then he quit his job.

I believe Mr. Howard Coffey told me to go out and picket the Beach Milk Company. He told me right down at Beach's after we arrived there. It was approximately ten

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o'clock we went there. I found out about being there that morning about a quarter to ten or thereabouts.

Redirect examination:

I am a citizen of the United States. I know the constitution of the United States guarantees every citizen the right to free speech.

WILLIAM THURMAN BULLARD.

Direct examination:

I am William Thurman Bullard, manager and partner of the Pioneer Trucking Company. I operate out of Boulder into Denver. I carry dairy products, milk and cream. I know the Austin haulers. Portions of our territory are the same; we are competitors. My truck company is unionized.

I have heard testimony by Mr. Moore and Mr. Austin concerning conferences at Mr. Moore's office in Denver [fol. 268] about September 1st. I happened to be there because I got word from Mr. Parker at Meadow Gold Dairy. He said Mr. Moore wanted to see me. Mr. Moore has to do with the marketing of milk, and at any time if there is any shipping of milk to be done in Denver he has to be notified along with Mr. Scott of the Denver Health Department. I found Mr. Moore and Linton Austin there. Mr. Moore told me what he wanted to see me about. He said, "Well, Blackie (my nickname) about this controversy, this union trouble," and I said, "Mr. Moore, you know I am a hundred per cent union. If you have anything to say that you don't want to be used, you better not say it," and he said, "What I say I don't care who knows it." I said, "All right, go ahead." He said, "Is Pioneer going to pick up any milk of Austin because of this controversy?" I said, "If any one wants me to haul their milk, I will," and he said, "If you do, I will fight you." I said, "Mr. Moore, I don't think that is right, because I have always supported this office, I have always spoken for this association, and if that is going to be your attitude this office is going to lose a member." At present I don't think Mr. Moore's association own any trucks hauling milk. Austin said when Mr. Moore said that, "Mr. Moore, if that is the attitude Blackie is going to take, I better tell the boys and I think they will join the union.

if that is to be Blackie's attitude." Mr. Moore said, "If [fol. 269] they don't want to join the union I will see they are not forced into the union." I don't believe he said how he was going to fight me. That was approximately all that was said between Mr. Moore and myself, with the exception I asked him how far his place was from Wadsworth and he told me, his home place. Since then I have continued in my work and Mr. Austin has continued in his work.

Cross-examination:

I don't remember when I joined the union. After all my men joined, I automatically joined. I don't remember the date; I think the union has a record of it. I joined before September 1, 1945. The date of the record of 537 of August 31 might be right. I employ four drivers. My garage is located in Boulder and Broomfield. I don't know when my four men joined the union; I wouldn't have any idea of the date. The names of my four drivers are Alvin Paulson, Herbert Elton, Douglass Craig and Eugene Bashford. At this point Mr. Coffey stated the drivers joined during the month of August.

My trucks were not stopped by the union at any time. The only stoppage we had was at the Beach Dairy. We had a shipper switched there three days before the picket went on and the driver wouldn't go through the picket line. [fol. 270] After my men joined the union, we didn't deliver there. There were no other places we did not make deliveries, we made all our deliveries. We picked up milk for John Metzger. Ever since I hauled his milk, he went to Carlson-Frink and three days before the picket went on he switched over to Beach. His hired man instructed my driver to take it to Beach. That was three or four days before the picket went on at Beach's. After the picket went on, we didn't deliver it to Beach; we took it back to Carlson-Frink. Mr. Metzger didn't complain to me. I have never spoken to Mr. Metzger by telephone or by mouth. I talked to him afterwards, after the picket went on. After I told him there was a picket there, he did not tell me he wanted his milk delivered to Beach. I had his authority to deliver the milk to Carlson-Frink. I don't know that Mr. Metzger took his milk away from me and gave it to Austin; I know Austin is hauling it. I am no longer hauling his milk.

I signed an agreement with the union. It is the same agreement that is in evidence here.

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When this controversy arose Austin Brothers were hauling Hillmeyer's milk to Stearns Dairy, and I am hauling it now. I don't know of any other customers of Austins that I have gotten since this controversy arose, but we have only picked up the Stearns milk.

[fol. 271] Redirect examination:

Austin got Metzger's milk from me. I talked to Mr. Moore about where I was to take Metzger's milk. When I found out the driver didn't take it to Beach I called Mr. Moore and asked him about it. He said, "I want to tell you, if you want to know, you will have to call Metzger." I said, "Where would you suggest?" and he said, "You have been taking it to Carlson-Frink," and I said, "I am calling from Carlson-Frink, we just as well leave it here," and he said, "All right."

Recross-examination:

Fred Austin was hauling Henderson milk, we took that from Stearns and Fred was out of his local territory; that was ours to start with.

HOWARD COFFEY.

(Recalled for further examination.)

Q. Mr. Coffey, I just read from your by-laws where the Executive Board is required to keep an accurate record of their transactions and report them in writing at the next regular meeting of the union. Your minutes do not show any report made by the Executive Board. Was any such report made in the months of July, August, September, or up to October 4th?

A. Yes, sir, made orally.

It was not made in writing. No written record to my [fol. 272] knowledge has been kept of the transactions of the Executive Board. I am not recording secretary. I am a member of that board and I know of no written records of any of the transactions of the Executive Board for July, August, September, or October. My attention was called to a provision in the by-laws making it imperative to members to come to the meetings once a month; I am familiar with that provision.

A. E. O'Neal.

(Recalled for further examination.)

Direct examination:

I moved here in July. I first came in May. I intend to remain here permanently. I am buying a home at 1310 Clermont. That is where I reside with my wife and family. My intention is to be a permanent citizen.

Cross-examination:

I have been here throughout the trial at all the sessions. I believe I have sat at the counsel table with my attorneys at all times. I attended the Mayor's meeting on September 12th, and I was over at the meeting at the Colorado Employers Council with Mr. Hall, Mr. Coffey, Mr. Moore and several others.

Defendants' Exhibit 2 offered in evidence and admitted. [fol. 273] Defendants' Exhibit 3 offered in evidence; objection was made and the same was sustained.

Rebuttal.

Plaintiff's Exhibit X marked for identification. Exhibit X admitted.

Lee Helburg.

Direct examination:

I am Lee Helburg, who has already testified in this case. I had a talk with Earl Christol at the Carlson-Frink Dairy somewhere between September 1 and 12, 1945. In that conversation I did not tell Mr. Christol that the boys, meaning by that the Austin drivers, were going to go along and join the union. I did not ask him for any application blanks; he gave me some. I told him they wouldn't do any good because they wouldn't join and I would just use them for scrap paper. I saw him a day or so later, and at that time I made the statement, "It looks like the boys are not going to join the union." I did not tell him "We had a meeting with Mr. Moore and Mr. Austin and it looks like they are not going to go along." I did not tell him I had a meeting with Mr. Moore and Mr. Austin and that the drivers had been instructed not to go in the union. I saw Mr. Moore at

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Boulder about that time; he was in the Austin Garage talking to Linton Austin. Mr. Moore had been out to see some [fol. 274] of the shippers and was just returning through there and we were arranging the milk to go through the next day to the different creameries. He did not in that conversation tell me in any way, shape or form not to join the union. Mr. Austin did not tell me in any way, shape or form not to go in or not to join the union.

Cross-examination:

The approximate date of the first conversation with Mr. Christol at Carlson-Fink was around the last of July. On that occasion he asked me if I wanted some applications, and I said it wouldn't do any good. Nevertheless, he gave me some applications and I took them. He gave me approximately six. The number of employees at Austin's was nine. I put the applications in my truck. I took them to Boulder and laid them on a bench. I handed one to a driver and he said, "You might as well throw them on the floor and step on them." I did that to one. I told Mr. Christol in the first conversation the boys wouldn't join the union and there was no use of taking the applications. I took the blanks because they asked me to take them along; I knew I was wasting my time. I saw them in the next few days, and I talked to him again and said, "The boys won't join the union." The fact is when they talked to me the first day I knew perfectly well they wouldn't join the union, had [fol. 275] no idea of joining the union; and I took the blanks, took them up there and put them on the bench, talked to one driver and then I reported to them. During that period Mr. Moore was in Mr. Austin's garage, and I heard a conversation between Mr. Moore and Mr. Austin; it was not about the union. It was about where we were to take our milk to the creameries in Denver. The union was not mentioned in that talk. Mr. Austin did not talk to me about the union. We had talked about it and he told us to do as we pleased, to join or not. I talked to my fellow employees about joining the union, to about five of them. I talked to the fellow that told me to throw the application blanks on the floor and step on them, when I got the applications, but that was the only time. I talked to the others before I got the applications, so I knew I was doing a useless task when I took the applications. I cannot see any use in the unions.

WALTER C. MOORE.

Direct examination:

I am Walter C. Moore, and I have already testified. I was in court yesterday when Mr. Bullard testified. Being asked in that conversation did Mr. Bullard say to me, "Mr. Moore, you know I am a hundred per cent union," he did not say that in just those words, but that is what it meant. He did not say, "If you have anything to say that you [fol. 276] don't want to be used, you better not say it." I did not say to him, "Is Pioneer going to pick up any milk of Austin because of this controversy?" Mr. Bullard did say to me, "If any one wants me to haul their milk I will." I did not say to him, "If you do I will fight you." He did not say to me, "Mr. Moore, I don't think that is right because I have always supported this office, I have always spoken for this association, and if that is going to be your attitude, this office is going to lose a member." He was not a member of my association. Mr. Austin did not say to me, "Mr. Moore, if that is the attitude Blackie is going to take I better tell the boys and I think they will join the union, if that is to be Blackie's attitude." I did not say to Bullard and Austin, "If they don't want to join the union I will see they are not forced into the union" in those words, but I meant that in the statement. My testimony shows the position I have taken all the time. I said something like that, but not in those exact words. In the conversation he did say partly, "That is not right, Mr. Moore, I have always supported this office." The part that is right is, "I have always supported this office."

I was at Boulder at the Austin Garage during this controversy about September 2. Some of the drivers were present when I was talking to Linton Austin. I was up in the country to see some of the shippers. After I got the [fol. 277] milk straightened out and I had some say they hadn't gotten their milk, I was finding out what happened and arranging for the deliveries for the following day. I did not in that conversation, at which some of the drivers were present, instruct the drivers not to join the union. I did not tell them in any way, shape or form not to join the union, nor did Mr. Austin, in my presence, make any such statement.

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Cross-examination:

As to my testifying that it was always my position that no hauler would be forced to join the union, my testimony is in the record; I said drivers or any one else.

LINTON C. AUSTIN.

Direct examination:

I am Linton C. Austin. I have already testified. Mr. Moore came to my garage in Boulder about September 2, 1945. He asked me where the milk had been delivered that day. It was on a Sunday, and I gave him all the deliveries of all the individual shippers and to what creameries they had gone. There was milk taken to the union plants where they would not let us unload. I think all of the drivers were present in that conversation, but I am not sure. It was about 4:30 or 5 o'clock in the afternoon in my garage at 27th and Spruce. At that time nothing was said by me to my drivers that they were not to go into the [fol. 278] union. There was nothing said by Mr. Moore to the drivers; that was not discussed at all. I was present at the conversation that Mr. Bullard testified to in Mr. Moore's office. Mr. Bullard said to Mr. Moore, "Mr. Moore, you know I am a hundred per cent union," as near as I can remember. That statement, "If you have anything to say you don't want to be used, you better not say it" was not made. Mr. Moore did not ask Mr. Bullard, "Is Pioneer going to pick up any milk of Austin's because of this controversy." Mr. Bullard did say, "If any one wants me to haul their milk I will." Mr. Moore did not say in answer to that statement, "If you do, I will fight you." Mr. Bullard did not say to Mr. Moore, "Mr. Moore, I don't think that is right." Mr. Bullard did say, "I have always supported your office, I always spoken for your office." He did not say, "If that is going to be your attitude, this office is going to lose a member." I did not make the following statement to Mr. Moore in the presence of Mr. Bullard, "Mr. Moore, if that is the attitude Blackie is going to take, I better tell the boys and I think they will join the union, if that is to be Blackie's attitude." Mr. Moore did not say, "If they don't want to join the union I will see they are not forced into the union."

[fol. 279] Cross-examination:

I say that Mr. Moore did not say, "If they don't want to join the union I will see they are not forced into the union." As to what he said, I am going to tell you the same thing he said, that he would not be a party to be used to force a man into the different unions.

JOHN W. METZGER.

Direct examination:

I am John W. Metzger. My residence is Broomfield, Colorado; I have an office in Denver and I am an attorney at law. I have a farm near Broomfield; it is 320 acres. I have a dairy herd there, and I ship milk to Denver from the herd. I am a member of the Denver Milk Producers, Inc. About the 1st of September my public utility carrier was the Pioneer Transportation Company. I was shipping my milk at that time to Carlson-Frink. I gave instructions to Pioneer to change to another dairy on Sunday, September 2. I told them to start delivering to Beach Milk Company. My milk was not delivered to Beach that day. I telephoned Mr. Paulson about that. He lives up near me and he drives the truck. I told him I wanted the milk shipped to the Beach Dairy; that was the second day after he had not delivered it. He said, "I didn't quite understand what you meant by having that changed." I said, "I meant just what I said, [fol. 280] I want it shipped to Beach." He said, "When do you want that to start?" I said, "It should have started yesterday when I first told you." I said, "Is it required this be in writing?" He said, "Oh, no, that isn't necessary, I will take it wherever you say to." That was the extent of that conversation. Each day I got a report from Beach that the milk had not been delivered to Beach. Following the report from Beach, I called Mr. Paulson. He delivers the Post route, runs the school bus, so I waited until late that evening to talk to him, and he said, "I have talked to Blackie about this," and I said, "I don't see what you have to talk about, Mr. Paulson, I am a shipper, you hold a permit and I am shipping merchandise. I told you to ship it to a certain point and if you don't ship it there, I am going to take your permit away from you." That was strong language, but I meant it. He said, "I will get right after

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it and you won't have any trouble." The following day he didn't take it to the Beach Milk Company and I went to the Public Utilities Commission. I heard from Mr. Bullard; he telephoned me from Boulder, and told me he was sorry I had any trouble about the delivery of my milk, that the Public Utilities Commission had hauled him on the carpet and that he had been up there to see them and promised them he would carry out the orders of the shipper. He said, "If you have any trouble in the future about this matter, I am [fol. 281] the only Bullard listed in the Boulder directory, and you telephone me." I didn't know then he was the owner of the Pioneer and I didn't know he was "Blackie"; I found that out later. That conversation was about the 10th or 11th. As a result of the way the Pioneer had handled my milk, I transferred to another carrier. I called Mr. Moore and asked him if there was any other carrier in the territory and he checked to see if the PUC covered another carrier and it was found the Austin permit did extend into my territory and I diverted to Austin. On my own initiative, I got Austin to carry my milk.

Cross-examination:

I told the driver if he didn't deliver the milk where I told him, I was going to take away his permit. If you are not familiar with the law of Colorado, I will familiarize you then. A certificate of convenience and necesity is issued by the Public Utilities Commission on a showing that the applicant will carry merchandise as consigned by the shipper, failing in which he loses his certificate of convenience and necessity because he is not filling the public need, and it was upon that premise that I appealed to the Public Utilities Commission to enforce the regulation, and it was upon that premise that they did enforce it. When I am paying a man to deliver the goods for me and he is in the business of doing it for the public, it is just like calling the [fol. 282] express company. If I called the express company and told them to take a package to Littleton or Colorado Springs and they said, "I have to talk to Eleanor Roosevelt before I can do it," I would mighty soon find out if the ICC would permit them to stay in the express business. Mr. Bullard told me on the 10th or the 11th the reason the milk was not transferred as I wanted, that before there could be any diversion of milk I must get the O. K. of Mr. Moore and Mr. Scott of the City Health De-

partment. He told me the reason he checked with Mr. Paulson and the reason Mr. Paulson didn't take the milk was because he didn't have Mr. Moore's O. K., not Mr. Scott's. I only knew it before I had that talk, I had it done before the 1st of September. Paulson was told it was O. K. by the City Health Department. He didn't take my milk where I wanted it to go four days hand running.

Plaintiffs rest.

Surrebuttal.

WALTER C. MOORE.

Direct examination:

I said I would not be used to force a man to join the union or anything else. As to what means I have available that can be utilized to protect a man from being forced to join the union, I can put the milk in a plant where the [fol. 283] plant will accept it. In other words, it was the diversion of the milk supply.

Defendants rest.

Papers marked for identification as Exhibits Y and Z offered and admitted in evidence.

Testimony closed.

Written opinion and judgment filed in all five causes February 27, 1946.

[fols. 283-1–283-14] IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

Civil Action No. A-45091—Div. 1

HAROLD HENNIGH, E. W. JOHNSON, O. T. HOLLAND, and ESTON BUSTER, Plaintiffs

Civil Action No. A-45099—Div. 4

DENVER MILK PRODUCERS, INC., Plaintiff

Civil Action No. A-45106—Div. 1

CARL A. BORGMANN and WALTER H. BORGMANN, d.b.a. BORGMANN BROS., L. C. Austin and F. S. Austin, d.b.a. Austin Bros., Plaintiffs

Civil Action No. A-45112—Div. 2

JOSEPH GREEN, Plaintiff

Civil Action No. A-45223—Div. 3

FLORA A. BEACH, Personally and as Executrix of the Estate of Fred W. Beach, Doing Business as Beach Milk Co., a Copartnership, Plaintiffs

vs.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, American Federation of Labor; Milk Drivers' and Dairy Employees' Local Union No. 537; et al., Defendants

OPINION—Filed February 27, 1946

These cases were argued and submitted together and may be disposed of in a single opinion because the law involved [fol. 283-15] governs the general factual situation existing in all of the cases.

The witnesses who testified in this matter may be grouped as follows:

Representatives of Dairies:

Loran D. Clark, Manager of Carlson-Frink Company, a union dairy since 1938.

Robert H. Reeves, President of Carlson-Frink Company.

G. L. Eicholtz, Plant Manager of Beatrice Meadow-Gold, union.

E. E. Hillmeyer, President, Stearns Dairy Company, union since April 3, 1945.

Howard K. Hall, Creamery Foreman, Brookridge Farm Dairy, union.

Lenus Alm, Owner of the Almhurst Dairy, non-union prior to September 20, 1945. Union since that date.

F. Leonard Beach, Manager, Beach Milk Company, non-union.

Representatives of Dairies and Farmer-Producers:

Walter C. Moore, Manager, Denver Milk Producers, Inc.

Farmer-Producers:

Ray Walker, James L. Johnson, Joseph Green, John Metzger.

Carriers:

Grant L. Vail, formerly non-union—now union.

Ralph Litherland, non-union.

Linton C. Austin, Fred H. Austin, Austin Brothers, non-union.

Fred Rein, Jr., union.

Walter A. Borgmann, brother of Carl Borgmann, doing business as Bergmann Brothers, non-union.

William Thurman Bullard, Owner of the Pioneer Truck Company, union.

Truck Drivers:

Lester Helberg, employed by Austin Brothers.

Lee Helberg, employed by Austin Brothers.

[fol. 283-16] Eugene Anderson, employed by Austin Brothers.

Lloyd Moore, employed by Austin Brothers.

Vern Carlson, employed by Austin Brothers.

Jake Roth, employed by Austin Brothers.

Walter Borgmann, employed by Borgmann Brothers.

Piggly-Wiggly Stores:

E. H. Lambotte, President Piggly-Wiggly Stores Co.

Emory Dorsey, Store 230 E. 13th Ave., union.

Howard Allison, 685 So. Pearl, union.
Joe Lombardi, 2311 Federal Blvd., union.
E. Dwight Montgomery, 44th and Zuni, union.
Walter Silcott, 1201 East 13th Ave., non-union.
Cobert Laws, 1491 So. Pearl, non-union.
Arthur Dykstra, 1215 East Wesley, non-union.
Kelvin Hammond, 4408 Yates, non-union.
William White, 1211 East Alameda, non-union.
Cecil E. Rouse, 9640 East Colfax, non-union.

Union Representatives:

A. E. O'Neal, International Representative of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.
Howard Coffey, Secretary, Local 537.
Earl Christol, Business Agent, Local 537.
Guy E. Downing, President, Local 17.
Edward D. Woodard, Business Agent, Local 17.
Charles F. Lindsey, Organizer for Western Warehouse and Produce Council.
Frank J. Burk, Secretary-Treasurer and Business Agent, Local 452.
Harry Shudeman, Business Agent Local 13.
Norman C. Pixler, Research Director, Joint Council 54.
Paul E. Dinsmore, Business Agent, Local 537.
Edward F. Hogan, Business Agent, Joint Council 54.

Union Employees:

Lindsey White, Creamery Worker, Brookridge Farm Dairy.
A. B. Parker, Creamery Worker, Beatrice Meadow-Gold.

[fol. 283-17] Early in the month of July, 1945, Local No. 537, Milk Drivers and Dairy Employees Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, began a determined effort to unionize the dairy industry in Denver. In pursuance of this plan, and to assist the local unions in obtaining their objective, the International sent one Mr. A. E. O'Neal, an experienced organizer, as its representative to Denver. Mr. O'Neal arrived in Denver July 6th or 7th, 1945, and now claims this as his permanent residence. He receives as compensation for his services $450.00 per month salary, plus expenses.

Certain of the dairies in Denver, engaged in the processing and distribution of milk, had prior to this controversy, become unionized. These dairies had entered into a contract agreeing to hire only union employees and to abide by union regulations. These dairy employees work on the receiving and processing of milk and are members of various local unions. Some of these dairies, such as Carlson-Frink, which has been operating under a union contract as early as 1938, the Beatrice Creamery Company, Brookridge Farm Dairy, and Supreme Dairy Company, are known and designated as "union dairies" and milk distributed by these dairies is designated as "union milk."

Other dairies, such as the Beach Milk Company, Berkeley Dairy, New Reliable Dairy, Wheatridge Farm Dairy, Royal Crest Dairy, Broadway Creamery and South Gaylord Creamery, have no contracts with the unions, employ non-union help and are designated "non-union dairies" and the milk handled by these dairies is designated as "non-union milk."

Likewise, certain public common carriers, such as the Pioneer and Rein, Jr., having since the inception of this controversy signed contracts with the union, are designated as "union truck lines", and the milk handled by them as "union milk." There are other common carriers, such as Austin Brothers, Borgmann Brothers, Lang, and Litherland, who are designated as "non-union truck lines", and the milk handled by them as "non-union milk."

In the process of organizing dairy employees in non-union dairies, the unions extended their scope of activity to union-[fol. 283-18] izing employees of various common carriers who transport milk from farmer-producers to the dairy. To further this objective, representatives of the union advised union dairies that they were going to prevent non-union carriers from unloading milk at their dairies. In a number of instances union dairies, such as the Carlson-Frink, Beatrice Creamery and Supreme Creamery, were not permitted to receive milk from non-union carriers such as Austin Brothers, Borgmann Brothers and Colorado Rapid Transit, and from July 30th on there were many instances of union dairies being unable to obtain milk shipped through non-union carriers. A picket line was established at the union dairies on September 6, 1945, and those dairies were advised that if they accepted non-union milk their union employees would be called out. From

September 2d to September 14, 1945, union dairies suffered a severe shortage of milk. Of course, this shortage was partly due to seasonable shortage that always exists at this time of the year and partly due to union activities.

Various meetings were held between the interested parties and others in an endeavor to iron out the difficulties. The Denver Milk Producers association had conferences with the defendant Coffey commencing July 1, 1945. Coffey tried to have the assocation bring pressure on the dairies and truck lines to unionize. He was advised that the association would not be a party to forcing men into the union, that it was a matter strictly up to the men themselves. Meetings also were held at the Colorado Employers Council with James Logan, its head, with a view to arriving at some amicable settlement. Meetings were also held on September 12th in the Mayor's office where Messrs. Hubbard, Brown, Cannon, Reeves, Clark, O'Neal, Coffey Voorhies, Moore, Minton, Jr., City Attorney Lindsey, Manager of Safety Kirschwing and the Mayor were present. An attempt was made to agree upon a truce of thirty days during which time the union would not picket. Mr. O'Neal, on behalf of the union, stated the union's position, and also stated that Austin, one of the non-union truck lines would, for the present, be permitted to unload at non-union dairies. City Attorney Lindsey wanted an agreement from the union that they would not picket, but the union refused.

[fol. 283-19] *The Denver Milk Producers, Inc., plaintiff in case No. A-45099, Division 4,* represents some 1200 farmers in eight counties surrounding Denver, namely, Larimer, Weld, Boulder, Jefferson, Adams, Arapahoe, Elbert and Douglas. This association acts as the distributing agent for these farmers, it being the function of the association to see, among other things, that there is more or less equitable distribution of milk among the various dairies and that fair standards as to quality and price are maintained. To be eligible for membership in this association, one must be a farmer-producer of milk and his milk must be acceptable to the Denver City Board of Health and pass City inspection. The City Board of Health inspects the milk twice a week and fixes the grade upon which the price is paid. The City notifies the association if the milk is not up to grade. The farmer-producer enters into a contract with the association whereby he agrees to market his milk through the association permitting the association to com-

mingle his milk with that of other producers. This milk is designated as Grade A milk and the farmer-producer is paid the blended price for this milk, which is sold in fluid form. Fluid milk is milk sold in bottles and being of a higher grade commands a higher price. There are certain grades of milk that are not Grade A, and, therefore, cannot be delivered in Denver. This milk is delivered to dairies such as the Farmers Dairy League outside the City limits.

The association is financially maintained by the farmer-producers permitting a deduction of one cent per pound of butter fat for the milk received at the dairy and which is remitted by the dairy directly to the association. All milk of the farmer-producers is now handled by the association, although prior to the war some 100 farmer-producers shipped their milk to the Adolph Coors Company at Golden, Colorado, who in turn distributed this milk under the supervision of the association to the creamery plants in Denver. When war conditions arose it necessitated Coors discontinuing this practice. Thereafter, the association took the milk directly from the farmer-producer and had it delivered to the creamery plants.

[fol. 283-20] Some dairies have their own herds which supply part of their needs, such as City Park, Brookridge and Cambridge Dairies. Their milk is not pooled with that of other shippers, although some of them do get milk from the pool. The pool handles 98 per cent of all milk produced. The dairies supply the association with reports twice a month as to the amount and quality of the milk and notify the dealer what he is to pay the farmer. There is also a bonus plan whereby a farmer gets a three-cent bonus when his milk is up to a certain standard. Every creamery dealer pays the same price for the same grade of milk. The shipper can pick his own dairy and the association has nothing to do with the milk insofar as the handling of it or where it goes is concerned.

This case involves interference by the union with the activities of the association, which contracts with the farmer-producer to see that delivery of his milk to the dairies is made, and the further attempt on the part of the union to bring pressure on the association to have it use its influence in getting the dairies and truck lines to unionize.

Mr. Walter C. Moore, who is the Manager of the association, testified that in addition to the talk with Mr. Coffey on July 1, 1945, Coffey also called him Saturday, July 28th,

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relative to what was troubling Ted Hayes, foreman of the Gold Coin Dairy; also, he had gotten word July 30, 1945, that Colorado Rapid Transit would not be permitted to unload milk at non-union dairies. He also attended a meeting of Colorado Employers Council, at which Coffey, O'Neal, Christol, and James Logan, President of the Council, were present, when an attempt was made by Mr. Logan to adjust the difficulty so that milk would not be destroyed. It was agreed that milk could go into non-union plants providing it was not delivered by union drivers. He also told of a meeting with Austin and Bullard on September 1, 1945, when Mr. Austin came to his office relative to what should he do with the milk consigned to union dairies, and at that time received a list of non-union dairies he could deliver to. Mr. Moore wanted to prevent unfair competition between Bullard, who was union, and Austin, who was non-union. He also attended a meeting at the Fairview School, four miles east of Boulder, on September 18, 1945, at which five [fol. 283-21] union representatives, namely, Messrs. Voorhies, Coffey, O'Neal, Lindsey, and Christol, were present. A Mr. Clincy, a producer, had asked for the meeting. Various questions were put up to the union representatives, such as, "Would a farmer handling his own milk have to join the union?", and on being told that he would not, the union was asked about the occurrence with Ray Walker. Mr. O'Neal and the union men spoke and outlined their position.

Borgmann Brothers and Austin Brothers, plaintiffs in Case No. A-45106, Division 1, are common carriers who transport milk to the dairies. Other truck lines are operated by Ralph Litherland, Fred Rein, Jr., and William Thurman Bullard. During the period of this controversy the owners of these truck lines and their employees were contacted to become unionized, but Austin Brothers, Borgmann Brothers, Litherland, and their employees declined. On the other hand, Fred Rein, Jr., and William Thurman Bullard, owner of the Pioneer Truck Line, of Boulder) under pressure became unionized.

The Austin Brothers and the Borgmann Brothers case involves interference by the union in preventing these carriers from unloading milk at union dairies. In addition to this grievance Austin Brothers complain that on the morning of September 2, 1945, a number of the representatives of the local unions, most of whom were officials in one capacity

or another of various locals, went to Boulder and congregated opposite the garage where the Austin trucks were housed. These union men followed these trucks as they made their pick-ups and deliveries from the farms on into Denver. Austin Brothers also maintained a truck at Niwot, Colorado, and one of the automobiles occupied by the union men followed this truck on its pickups and deliveries, and instilled fear into the heart of the Austin driver. On behalf of the defendants there was no denial of this union activity, they admitting that they had gone to Boulder and Niwot on the early morning of September 5, 1945 and following the Austin trucks, but maintained their purpose was purely peaceable and was for the purpose of finding out where the milk was being diverted in Denver. The union representatives stated that this action was determined upon at a [fol. 283-22] meeting held at union headquarters the night before. They further maintained that at no time was there any threats made, and that there was no violence.

The Borgmann truck line is non-union, and prior to this time had served both union and non-union dairies. The company owns two trucks, one driven by Walter Borgmann, who was a witness in these cases and is a brother of Carl, the owner, and the other truck is driven by an employee, one Maurice Cochell. Borgmann Brothers, in addition to operating the truck line, engage in farming and have twenty to twenty-five head of cows and deliver not only their own milk, but also the milk of some other thirty-seven farmer-producers. The truck line overlaps with other truck lines, such as Colorado Rapid Transit and Lang. It covers a large territory, but is only exclusive for three shippers. The Borgmanns were first advised of union activity on Sunday, September 2, 1945 when they made their usual deliveries but when the Austin Brothers were not permitted to unload milk at union dairies. On September 6, 1945 he failed to make deliveries at union dairies, being first stopped at the Supreme Dairy Company because the driver did not have a union card. Prior to and during this period Borgmanns were contacted by union representatives and had a number of conferences as to whether the line would be interested in joining the union, but they were not. Borgmann stated that shippers had advised him that if the union interferred with their unloading of milk to tell them to go to hell. This was communicated to Coffey, who replied that if the ship-

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pers had to feed their milk to the hogs for thirty or sixty days they might change their minds.

Joseph Green and James L. Johnson, farmer-producers, rode to town with their milk on Borgmann's trucks. Joseph Green rode with Walter Borgmann on September 8th and 10th. On September 8th, at the Carlson-Frink creamery, a union dairy, permission was asked to unload the milk as an owner-operator, but permission was denied. The same thing happened on Monday, September 10, 1945, with the result that the milk had to be taken to non-union dairies and unloaded. Tuesday, September 11th, permission to unload at the Supreme Dairy was denied, although permission had been granted two days previously.

[fol. 283-23] James L. Johnson rode with Walter Borgmann to the Supreme Dairy, a union dairy, on Sunday, September 9th, and he was permitted to unload his milk as an owner-operator, but after leaving the Supreme Dairy and driving to the Beatrice Meadow-Gold, another union dairy, they were contacted by Coffey and three other union representatives and denied permission to unload their milk. The Borgmann truck line has had friendly relations with the South Broadway and Berkeley creameries, which are non-union, and the company feels that if it became unionized it would be letting these non-union creameries down. The company feels indebted to them by reason of past favors. Borgmann stated that on one occasion when he was contacted, Coffey said "Borgmann, we will get you by hook or by crook."

Mr. Coffey, the union representative, admitted that he was at the Carlson-Frink creamery when union members refused to handle non-union milk, but denied that there was any threat made to Borgmann that they were going to get him to join by hook or by crook, and that all of his talks with Mr. Borgmann were on a friendly basis. When unable to deliver milk they contacted the Denver Milk Producers association and advised Mr. Weber, of the association, that it was up to the association to find a market for their milk.

Joseph Green, plaintiff in Case No. A-45112, Division 2, involves the interference by the union with the delivery of his milk to union dairies in company with Borgmann, and he verified Walter Borgmann's testimony as to the two instances on September 8th and 10th when he requested that he be permitted to unload his own milk as an owner-

operator and was denied such permission. Those available for the picking up of the Green milk were the Borgmann Brothers and the Colorado Rapid Transit. Borgmann is non-union and Colorado Rapid is union, but Green prefers to do business with Borgmann instead of Colorado Rapid Transit.

The Plaintiffs, Harold Henningh, E. W. Johnson, O. T. Holland and Eston Buster, in Case No. A-45091, Division 1, participate in a national milk marketing program known as the "Golden Guernsey Program," with headquarters [fol. 283-24] located at Petersboro, New Hampshire. These men are all members of the Denver Milk Producers association. They produce a superior quality of milk which is sold at a premium. After being pasteurized by the Carlson-Frink Company, which is the sole dairy that pasteurizes and markets it, this milk is sold separate and apart from other milk products and is sold at a premium. The carrier of this milk has been Austin Brothers, non-union truck line. As Carlson-Frink Company is the only dairy participating in this program and is a union dairy, and as the Austin Brothers are the carriers for this milk, and being non-union, and were not permitted to unload this milk, the supply thereof was shut off from Sunday, September 2, 1945 through to September 12, 1945.

The Beach Milk Company, plaintiff in Case No. A-45223, Division 3, is a non-union dairy. It was contacted to join the union some six or eight months prior to the time the present controversy arose, but was not interested at that time. On September 1, 1945, the Beach Milk Company had a production of about 2200 gallons of milk, employed 27 persons, of whom 21 would be eligible for union membership. At the time this controversy arose they were in the process of erecting a new boiler plant which it was hoped would be in operation by November 1, 1945. The company sells milk to restaurants, hotels, the Piggly-Wiggly Stores and the Army. Its two largest customers are the Union States Government, which takes 1000 gallons of milk daily for Buckley Field, and some 24 to 26 Piggly-Wiggly stores, supplying practically the entire supply of milk retailed by these stores. F. Leonard Beach is the Manager of the Company, which was originally a co-partnership composed of his father and mother. The father is now deceased and his estate is in the course of administration.

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The Company was contacted by Messrs. Coffey and Christol, Union representatives, on September 10, 1945 and F. Leonard Beach was advised if he did not sign a union contract his plant would be picketed and pressure would be brought to bear on the Piggly-Wiggly Stores to have them discontinue purchasing Beach milk. Up to this time the Company was getting both "union" and "non-[fol. 283-25] union" milk. After unsuccessful negotiations to sign up the Company and its employees in the union, the plant was picketed—the picket carrying a sign with the legend "Unfair to Local No. 537."

Negotiations with union representatives extended over a number of days and also with Mr. Nathan Creamer, attorney for the Beach estate. At one of these sessions Mr. Beach asserted that Mr. Christol had said, in answer to a question by Mr. Beach as to what would happen if he did not join the union, "the union will put forth every effort to destroy the Beach Milk Company as a business." Mention of a secondary boycott was implied by mention of the union's power with the Piggly-Wiggly Stores. Picketing did start on the Beach plant on September 10, 1945 and continued until the temporary restraining order was issued by Judge Steele on September 21, 1945. This interference on the part of the union caused the Company to lose producer-shippers, such as those that came over the Rein truck line which became unionized and would not deliver to his plant. The Company also maintains that it had the problem that if it did become unionized it would lose farmer-producers who had evinced animosity towards unions and union dairies. From September 10th to 21st many of the company's regular shippers were cut off and the company had to obtain milk of an inferior grade from Johnstown to make up some of the deficiency. There was also interference with the union bricklayer working on the boiler plant, who ceased employment and the Company had trouble one time in getting its coal promptly delivered by the Rio Grande Fuel Company, which employs union drivers.

Under the Army contract the Beach Company is obligated to furnish a special grade of milk. The farmer-producer receives a bonus for the milk produced by him and in turn the Army was permitted to buy this milk from the Beach Company at a one-half cent increase in price per quart above the OPA ceiling price. To obtain this high-grade

quality milk, the Beach Company installed a special inspection system whereby the herds of the farmer-producers were regularly inspected and scientifically improved methods of production imposed on the farmer-producers and [fol. 283-26] insisted on. Loss of the Piggly-Wiggly and Army business would have been serious to the Company because it would have had a large supply of milk for which there would have been no outlet.

There was no denial on the part of the union that it had had negotiations with Mr. Beach looking to unionizing the plant, that it had established a picket line, that a number of union representatives had congregated across the street one day, and that the truck drivers delivering milk to the dairy were contacted in an attempt to get them to join the union, but stated that all of this was done in a peaceable manner, without any disturbance and with no threat of violence.

During this period of time the Almhurst Dairy and the Stearns Dairy suffered interference. With respect to the Almhurst Dairy, it was a non-union dairy and, like the Beach Milk Company, was engaged in construction work under a union contractor employing union labor. Lenus Alm is the owner of the Almhurst Dairy, located at 190 West Nevada and has seven employees. It is a member of the Denver Milk Producers association and, as stated, was a non-union dairy prior to September 20th or 21st, since which time it has become unionized. Sometime in September, 1945, there were three union bricklayers working on the addition which was to cost somewhere in the neighborhood of $40,000.00 and about four more weeks were needed to complete the building. His employees had never asked whether they should join or not join the union. Union representatives Coffey and Christol contacted him sometime before September 17th. They had a union contract and wished him to sign, and advised him at that time that they had Beach about signed up. Tuesday, September 18, 1945, he was again contacted and asked if he was ready to sign up and he asked Coffey and Christol to come to his home to discuss the matter because they could discuss it more quietly. In the meantime he had talked to James Logan and Mr. Hall of the Colorado Employers Council and had advised them that he was going to be picketed unless he joined the union and wanted their advice. His place was picketed, so he called Coffey from Logan's

office and Coffey promised to take the picket off if he [fol. 283-27] signed, so he did sign a union contract on September 20th or 21st, but frankly states that he would not have signed if the union bricklayers had not struck. He maintained that he was paying more than the union scale to his employees. He also contacted Mr. Moore of the Denver Milk Producers association, who advised him he did not have to sign with the union and Mr. Moore thought he could get milk into his plant without his signing. In his discussions with his employees about joining the union some said they would and some said they would not.

With respect to the Stearns Dairy, on April 3, 1945 they had signed a contract with the union, but certain conditions of the contract as to wages and commissions had not been agreed upon. These issues had been submitted to a panel of the National War Labor Board, but the Board had failed to issue directive order and the matter had been referred back to the employer and employees. Mr. Hillmeyer, President of the Stearns Dairy, was contacted one morning somewhere between 4:30 and 5:00 o'clock, A. M., and advised that if he did not sign a union contract his milk would not go out. After some bickering, he acceded to the demands of the union. The Stearns Dairy used to receive milk delivered by non-union carriers, and upon being advised that his employees could and would not work on this milk he was compelled for over a week to haul his own milk. Mr. Coffey, the union representative, admitted that there was a controversy with the Stearns Company and with respect to the refusal of the drivers to deliver milk on September 7, 1945. Mr. Coffey claimed that Mr. Hillmeyer had broken an appointment to settle the matter, but that the matter was finally settled, namely, on the morning of September 7, 1945, by Hillmeyer agreeing to the union's conditions, namely, paying back pay of $100.00 and $210.00 per month to the drivers.

In carrying out the threat of a secondary boycott made by the union representatives to the Beach Milk Company, various union officials, namely, Coffey, Christol, Pixler, Dinsmore and Maxwell (the latter representing the Retail Clerk's Union) contacted Mr. E. H. Lambotte, President of the Piggly-Wiggly Stores Company, which operates under a franchise from the main office with headquarters in [fol. 283-28] Atlanta, Georgia. Some nine owners or managers of Piggly-Wiggly stores were also contacted. Mr.

Lambotte discussed the milk situation with Mr. O'Neal, Mr. Coffey and Mr. Voorhies (the latter a representative of the Bakery Drivers Union). Mr. Lambotte was advised on September 11, 1945, that the union was having trouble with the Beach Milk Company and he was requested to use his good offices in trying to persuade Beach to sign a union contract, and he was advised that if Beach refused it might be necessary to establish a secondary boycott of the Piggly-Wiggly stores. Lambotte did call Beach. On September 19, 1945 Coffey advised Lambotte that the union was going to picket the Piggly-Wiggly stores. Coffey was considerate of their position and advised him to have the stores make their arrangements for a milk supply.

The company has no special policy as to whether its stores are union or non-union, leaving it to the individual store whether to unionize or not. Lambotte was advised by Mr. O'Neal that no picket line would be established until they got another supply. However, on Thursday, September 20th, he was advised that the stores would be picketed the next day, so he advised Beach not to deliver and also contacted every Piggly-Wiggly store as to the situation. The issuance of the temporary restraining order obviated further action, as Beach was allowed to continue deliveries. He states that Piggly-Wiggly relations with the union had been friendly and all of the negotiations he had were conducted in a businesslike manner without threats. He was confident no store would accept Beach milk if it was picketed.

As stated, some nine Piggly-Wiggly owners and managers were contacted prior to September 20th, four of them being union and five non-union stores. They were advised not to accept Beach milk and there were instances where the union representatives were angry because certain owners had accepted milk after being advised not to do so. In one instance William White, manager of Piggly-Wiggly store at 1211 East Alameda was advised by Mr. Dinsmore on September 20, 1945, that there was trouble with Beach and stated to Mr. White, "I am telling you now if you accept milk tomorrow from Beach we will slap a picket on the store." The Piggly-Wiggly stores got practically [fol. 283-29] all of their supply of milk from the Beach Milk Company.

Ray Walker, a farmer-producer delivers milk with his own truck to the Carlson-Frink Company. On September

6th he was warned that unless he joined the union, union dairies would not accept his milk, so he went to union headquarters and paid a month's dues.

John L. Metzger is a lawyer and farmer-producer, also a member of Denver Milk Producers, Inc. He formerly shipped his milk through the Pioneer truck line to the Carlson-Frink Company. When this controversy arose he felt the union activities were wrong and notified the Pioneer truck line to deliver his milk to Beach and on their failure to do so he protested to the Public Utilities Commission with a complaint to revoke their permit, as he felt that under their permit of public necessity and convenience they were obligated to carry his milk to the dairy he designated. The witness admitted the use of strong language during this controversy.

Harold K. Hall, creamery foreman at the Brookbridge Farm Dairy, a union dairy, had various conferences with union representatives who came to the plant. He was advised by Mr. Coffey that the union was not going to allow women to work in the dairies. On September 2, 1945, union representatives Dinsmore and three of four other members came to the plant and said they were there to prevent Austin Brothers from unloading milk and if he did they would pull the men out of the plant. On Monday, September 3, 1945 when advising Coffey that this was a free country and they could not use Hitler tactics on him and that he was going to use non-union milk whether they liked it or not, Coffey advised him if he did someone was going to get shot. Coffey denied making any such statements and said that the statements relative to women not working in the plants was that they would have fifteen days in which to join the union.

The situation existing in each case may be gathered from the foregoing general statement of facts. Of course, some of the facts overlap in the various cases, while other facts are pertinent only to a particular case. However, in general the situation must be viewed as constituting one controversy.

[fol. 283-30] The court listened with attention to the logical and well prepared arguments of counsel for the respective parties, has examined with care not only the many authorities cited by counsel, but additional authorities as well; has made a careful analysis of the evidence to which the court must apply the law, and has come to the conclusion

that this case can be decided by an answer to this question:

Can the State pass an act defining a "labor dispute" so as to enjoin a union from the commission of certain acts defined to be unfair labor practices, when the purpose is to urge employer and employees to join a union, and where there exists no employer-employee relationship?

If so, many of the cases cited by counsel for the plaintiffs apply and the temporary injunction heretofore issued should be made permanent, and the question of damages determined on further trial. On the other hand, if the State is prohibited from so defining a labor dispute that the commission of certain acts deprives the defendants of certain fundamental rights secured to them by the Constitution of the United States, then the cases cited by counsel for the defendants apply and the motion to dismiss should be granted.

The Colorado Labor Peace Act, Chapter 131, Special Laws of 1943 (subdivision 2-a, Chap. 97, 1943 Cum. Supp. 2, 1935 C.S.A.) defines the term "labor dispute", in subsection 7 of Sec. 2, as follows:

> "The term 'labor dispute' means any controversy between an employer and such of his employees as are organized in a collective bargaining unit, concerning the rights or process or details of collective bargaining. The entering into of a contract for an 'all-union agreement' or the refusal of an employer to enter into an 'all-union agreement' shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee."

Then in Section 6 it defines what are unfair labor practices, and in Section 7 what are not unfair labor practices and Section 8 prevention of unfair labor practices.

[fol. 283-31] Judge Sackmann, in his well reasoned opinion in the case of *American Federation of Labor* v. *Reilly*, which went to our supreme court and is reported in 155 Pac. (2) at 145, held valid certain sections of the Labor Peace Act which the plaintiffs in that case insisted were unconstitutional.

These sections make picketing, boycotting, striking, and other union activities unfair labor practices under certain conditions and circumstances. Judge Sackmann held these to be simply regulations and limitations upon the type of

unlawful conduct criticized in many of the cases which he quoted. Our supreme court said that Judge Sackmann was premature in declaring these sections valid, that it was not proper under our Declaratory Judgment Act to so proceed and that their constitutionality could only be determined when a concrete situation involving them had actually arisen.

"This leaves for our consideration the trial court's ruling on sections 6(1)(c), 6(2)(g), 6(2)(1), 8(15) and 11(2), which makes picketing, boycotting, striking and other existing union activities, under certain circumstances, unfair labor practices. The plaintiffs contend that the restrictions proposed constitute a denial to labor organizations and their members of the rights of free speech, assembly and to contract, and otherwise deprive them of rights protected under the Fourteenth Amendment to the Federal Constitution, and constitute an attempt to impose involuntary servitude in violation of the Thirteenth Amendment, and that the trial court so erred in declaring them valid. As appears from its opinion, the trial court recognized 'that many of the questions here passed on by the court in regard to the various separable provisions of the Colorado Peace Act (in which category the subsections last cited above must be placed) many approach very closely to an advisory status, and the anticipatory conditions have not yet arisen and do not arise on the face of the statute itself,' and thus might not be within the purview of our Uniform Declaratory Judgments Act. Notwithstanding, in the performance of what it considered its responsibility to further a final disposition of the [fol. 283-32] issues, the court proceeded to their complete adjudication.

"We are convinced, for the reasons which follow, that instead of so acting, the court, in accord with its initial view above quoted, should have declined to pronounce declaratorily on the phase of the case in discussion.

"Under our Uniform Declaratory Judgment Act, where results to occur from the enforcement of a statutory provision can be predicted with certainty, as is the situation with respect to sections 20 and 21 and interrelated subdivisions, or where the basic right of

> the state to enter legislative fields said to be the domain of the Federal Government is questioned, as here is done by the contention relating to the National Labor Relations Act, a court properly may declare with respect to the validity of a statute, but in the very nature of things the law makers in passing the Uniform Declaratory Judgment Act did not intend that a court should enter into a speculative inquiry for the purpose of upholding or condemning statutory provisions, the effect of which, in concrete situations, not yet developed, could not be definitely perceived."

As the supreme court further said:

> "Certainly, it seems to us, in conflicts as to the construction or application of these subsections, if such arise, properly may be resolved only in concrete situations in actual cases."

We have now come to concrete situations in five actual cases before us and must construe and apply these subsections to the facts before us in the five cases and determine their applicability.

The evidence disclosed in its entirety that no labor dispute, such as that defined in the Act, existed, and therefore defendants would be guilty of the commission of unfair labor practices, as defined in the Act. The question then is to determine whether certain fundamental rights secured to all citizens by the Constitution of the United States have [fol. 283-33] been invaded. The plaintiffs maintain that it is within the power of the State to define a "labor dispute," and that by the Colorado statute it has been defined so as to exist only where an employer-employee relationship exists. They further maintain that by the Act the historic right of injunction has only been taken away where a labor dispute does not exist as therein defined. On the other hand, the defendants claim that certain fundamental rights secured to them by the Constitution of the United States have been invaded, if it was intended to mean that an actual labor dispute can only lawfully exist where the majority of the employees of a particular employer were participants, and where an employer-employee relationship exists.

It must not be forgotten that originally the attitude of courts in general was hostile to the rights of labor, and

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that it has only been due to a more enlightened consideration of the rights of labor and of the justice due the laboring man that the harshness of many of the earlier decisions has been ameliorated. Mr. Justice Brandeis, in tracing the development of the rights of the working men, said in his dissenting opinion in

Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254, 27 A. L. R. 375:

"In England a working man struggling to improve his condition, even when acting singly, was confronted until 1813 with laws limiting the amount of wages which he might demand. Until 1824 he was punishable as a criminal if he combined with his fellow workmen to raise wages or shorten hours, or to affect the business in any way, even if there was no resort to a strike. Until 1871 members of a union who joined in persuading employees to leave work were liable criminally, although the employees were not under contract, and the persuasion was both peaceful and unattended by picketing. Until 1871, threatening a strike, whatever the cause, was also a criminal act. Not until 1875 was the right of workers to combine in order to obtain their ends conceded fully."

[fol. 283-34] And then goes on to say:

"In the United States the rules of the common law governing the struggle between employer and employee have likewise been subjected to modification. These laws have been made mainly through judicial decisions. The legal right of workingmen to combine and to strike in order to secure for themselves higher wages, shorter hours, and better working conditions received early general recognition. But there developed great diversity of opinion as to the means by which, and also as to the persons through whom, and upon whom pressure might permissibly be exerted in order to induce the employer to yield to the demands of the workingman."

This conflict between property rights and human rights is set forth in *Truax v. Corrigan, supra*, decided December 19, 1921, a case in which pickets during a strike had resorted to libelous language and threats, the U. S. Supreme Court

invalidated an Arizona statute prohibiting court injunctions against peaceful picketing. Chief Justice Taft, in passing on the constitutionality of the Arizona act, said:

> "A law which operates to make lawful such a wrong as is described in plaintiff's complaint deprives the owner of the business and the premises of his property without due process, and cannot be held valid under the 14th Amendment."

And further:

> "The Constitution was intended—its very purpose was—to prevent experimentation with the fundamental rights of the individual. We said through Mr. Justice Brewer, in Muller *v.* Oregon, 208 U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957, that 'it is the peculiar value of a written constitution that it places in unchanging form limitations upon legislative action, and thus gives a permanence and stability to popular government which otherwise would be lacking."

[fol. 283-35] However, at the same term of court Chief Justice Taft in:

> *American Steel Foundries v. Tri-City Central Trades Council, et al.*, 257 U. S. 208, 42 Sup. Ct. 72, 66 L. Ed. 199, 27 A. L. R. 360, decided December 5, 1921,

said in what was the beginning of a more liberal attitude towards labor:

> "It has been determined by this court that the irreparable injury to property or to a property right, in the first paragraph of § 20 (Clayton Act), includes injury to business of an employer, and that the second paragraph applies only in cases growing out of a dispute concerning terms or conditions of employment, between an employer and employee, between employers and employees, or between employees, or between persons employed and persons seeking employment, and not to such dispute between an employer and persons who are neither ex-employees nor seeking employment."

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And further stated:

"A restraining order against picketing will advise earnest advocates of labor's cause that the law does not look with favor on an enforced discussion of the merits of the issue between individuals who wish to work, and groups of those who do not, under conditions which subject the individuals who wish to work to a severe test of their nerve and physical strength and courage. But while this is so, we must have every regard to the congressional intention manifested in the act, and to the principle of existing law which it declared, that ex-employees and others properly acting with them shall have an opportunity, so far as is consistent with peace and law, to observe who are still working for the employer, to communicate with them, and to persuade them to join the ranks of his opponents in a lawful economic struggle. Regarding as primary the rights of the employees to work for whom they will and undisturbed by annoying importunity or intimidation of numbers, to go freely to and from their place of labor, [fol. 283-36] and keeping in mind the right of the employer, incident to his property and business, to free access of such employees, what can be done to reconcile the conflicting interests?"

"Each case must turn on its own circumstances. It is a case for the flexible remedial power of a court of equity, which may try one mode of restraint, and, if it fails or proves to be too drastic, may change it. We think that the strikers and their sympathizers engaged in the economic struggle should be limited to one representative for each point of ingress and egress in the plant or place of business, and that all others be enjoined from congregating or loitering at the plant or in the neighboring streets by which access is had to the plant; that such representatives should have the right of observation, communication, and persuasion, but with special admonition that their communication, arguments, and appeals shall not be abusive, libelous, or threatening, and that they shall not approach individuals together, but singly, and shall not, in their single efforts at communication or persuasion, obstruct an unwilling listener by importunate following or dogging his steps. This is not laid down as a rigid rule,

but only as one which should apply to this case under the circumstances disclosed by the evidence, and which may be varied in other cases. It becomes a question for the judgment of the chancellor, who has heard the witnesses, familiarized himself with the locus in quo, and observed the tendencies to disturbance and conflict. The purpose should be to prevent the inevitable intimidation of the presence of groups of pickets, but to allow missionaries."

In many cases, courts found that the picketing union had no membership amongst plaintiffs' employees, and held that the union had no right to demand of plaintiffs that their employees join the union.

In

Safeway Stores, Inc. v. Retail Clerks' Union, 184 Wash. 322, 51 P. (2d) 372,

[fol. 283-37] decided November 8, 1935, the court said:

"The conduct of respondents in conjunction with that of appellant, cannot be determined a labor dispute. It is an unwarranted attempt on the part of respondent to compel appellant, against its right of choice, to become active in the cause of respondent, with the result that upon the failure of that attempt, respondent purposely commenced and continued picketing."

And again, the same court, in

Adams v. Building Service Employees Union, 197 Wash. 242, 84 Pac. (2d) 1021,

decided Dec. 6, 1938, said:

"The question whether a 'labor dispute', within the Labor Dispute Act of this state, is involved where a union is engaged in picketing an employer's place of business, and on account of the refusal of the employer to enter into an agreement with the union respecting wages and hours of labor of his employees, where the union in question is not composed of employees of employer involved, is foreclosed by Safeway Stores *v.* Retail Clerks Union, 184 Wash. 322."

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The court felt in these two cases that there was no labor dispute as defined within the Labor Disputes Act, and that picketing an employer under such conditions entitled him to injunctive relief.

In

Roth v. Local Union, 24 N. E. (2d) 280,

decided December 22, 1939, an employer was picketed to compel a closed shop agreement, none of his employees belonging to the union. The Indiana statute, like our statute, prevents the employer from interfering or coercing employees in their right to join or not join a labor union. The court said in that case:

> "The facts are not here in dispute. The court finds from the evidence (which is not before us) that the [fol. 283-38] plaintiff had performed all obligations imposed upon him by law; that he was at peace with his employees: that none of them belonged or wanted to belong to the picketing union; and that the object of the picketing complained of was to compel the plaintiff, against its desire, to sign a closed shop contract, whereby his employees would be compelled to join the union against their will or be discharged, which, as we have already pointed out, the plaintiff was prohibited from doing by positive law. Under these circumstances, the picketing was wrongful and oppressive, and it ought to have been enjoined."

In

Simon v. Schwachman, 18 N. E. (2d) 1,

a Massachusetts case, decided December 16, 1938, the union picketed an employer who had three employees, in an attempt to compel a closed shop agreement. The court granted an injunction against such picketing, although it was peaceful, because it was in aid of an unlawful act. The court said:

> "But it is settled that the statute gives protection in such cases only where there is a lawful trade dispute lawfully conducted."
>
> "In this case the acts of the defendants are not justifiable under the common law of this commonwealth

> even with the peaceful persuasion act added, because there is no lawful trade dispute recognized by that law. * * * Only where a labor union itself has contractual relations with an employer, as by an agreement for a closed shop, may the union take coercive action in its own right."

In

Mitnick v. Furniture Workers Union, 200 Atl. 553,

a New Jersey case, decided July 8, 1938, there was an attempt on the part of the union to compel plaintiff to sign a union contract, although none of his employees belonged [fol. 283-39] to the defendant union. On his refusal, secondary picketing of his customers followed. The court, in granting an injunction, stated:

> "None of these recited facts are in dispute, except that defendants claim that none of their activities included any threats, intimidation or attempted coercion. These activities are defended on the ground that they are entirely peaceable, are merely in furtherance of the interests of the members of the defendant union, and for the information of the public. Except for an argument in justification of the distribution of such circulars, and to be hereinafter discussed, the facts of this controversy would not merit discussion, as where no strike or labor controversy exists, picketing of the employer's place of business is unlawful."

Wisconsin Employment Relation Board v. Milwaukee Ice Cream Drivers and Dairy Employees Union, 238 Wis. 379, 299 N. W. 31,

decided June 25, 1941, a case where the plaintiff, for several years, had an all-union contract which was about to expire. On giving notice of termination, the company informed the union that it would enter into a new contract, but would not enter into a contract containing an all-union provision, unless such provision was desired by three-fourths of the employees, as required by the Wisconsin law. Upon petition by the company, the Board held a referendum and its employees voted against the all-union provision. Thereafter the union picketed. The court said:

> "The terms of the statute cannot be stretched to permit a union to enforce by picketing demands which

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the employer may not lawfully accede to. No more may this be done by court decision. Picketing that so aims is unlawful, although it is free from violence."

In

Retail Clerks Union v. Wisconsin Employment Relations Board, 242 Wis. 21, 6 N. W. (2d) 698,

[fol. 283-40] decided December 11, 1942, the court stated:

"As hereinbefore indicated, we hold that the evidence sustains a finding that the purpose and intent of the picketing was to put pressure upon the employer to commit an unfair labor practice and coerce its employees to join the union. This being the purpose, the picketing is unlawful; and under the decisions of this court and the United States supreme court, it may be enjoined."

Fashioncraft, Inc. v. Halpern, et al., 48 N. E. (2d) 1,

a Massachusetts case, decided March 29, 1943, was a case in which the union had picketed an employer in an attempt to compel the execution of a closed shop agreement. The court said:

"Picketing, however, may be more than a means for making public the facts of a labor dispute. The presence of persons, patrolling along the highway abutting the employer's premises; marching back and forth in more or less close formation; obstructing passage to those entering or leaving the premises; impeding free and uninterrupted travel along the public way, may be sufficient to induce breaches of the peace and other infractions of the law designed to preserve the safety and security of society. Such a situation may arise irrespective of the nature of the information conveyed by the pickets. Although picketing may be affiliated with free speech, a State is not required to tolerate picketing of all types and may regulate and restrict it in order to avert some definite substantial danger clearly arising from the method adopted by pickets."

The court further said:

> "In this commonwealth a strike for a closed shop is for an unlawful labor objective. It is not a lawful dispute but a tort."

And further stated:

> "Just as picketing may become unlawful through the use of unlawful methods, it may also become un-[fol. 283-41] lawful if directed to the accomplishment of an unlawful purpose."

In

> *Wisconsin Labor Relations Board v. Rueping Leather Co.*, 228 Wis. 473, 279 N. W. 673, 117 A. L. R. 398,

decided May 17, 1938, the court said:

> "The State may, therefore, regulate labor relations in the interest of the peace, health and order of the State."

Under these authorities, it is the contention that the State, under its undoubted right under its police power, may so define a labor dispute as to make the commission of certain acts unlawful. Constitutional decisions of the Supreme Court of the United States rendered obsolete, more or less, much of the established judicial precedents that had been established.

It is to be noted that the experimentation upon which Chief Justice Taft frowned in Truax *v.* Corrigan has come to pass. Justice Brandeis in his dissenting opinion in that case, commencing upon experimentation, said:

> "The divergence of opinion in this difficult field of governmental action should admonish us not to declare a rule arbitrary and unreasonable merely because we are convinced that it is fraught with danger to the public weal, and thus to close the door to experiments within the law."

We feel that what he contended for in that case has now become the law.

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Identification of peaceful picketing with the right to freedom of speech was first intimated in

Senn v. Tile Layers Protective Union, 301 U. S. 468, 57 S. Ct. 857, 81 L. Ed. 1229

decided May 24, 1937, when Mr. Justice Brandeis, speaking for the majority, said that the right of free speech guaranteed by the Federal Constitution entitled a union to make known the facts of a labor dispute:

> [fol. 283-42] "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

The conflict between the principles of State Sovereignty and the United States Supreme Court's power and function under the First and Fourteenth Amendments to protect, safeguard and hold inviolable the private rights of citizens against oppression by the state came to a head in:

Thornhill v. Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093,

and

Carlson v. California, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104,

both decided April 22, 1940. By these cases the supreme court evolved new liberalizing principles and peaceful picketing became judicially identified with free speech under the protection of the Federal Constitution. By these decisions peaceful picketing was henceforth beyond legislative prohibition because it was constitutionally protected under freedom of speech under the First and Fourteenth Amendments.

This liberalizing principle was followed in

American Fed. of Labor v. Swing, 312 U. S. 321, 61 S. Ct. 568, 85 L. Ed. 855,

decided February 10, 1941, wherein Mr. Justice Frankfurter, who delivered the opinion of the court, said:

> "In No. 1 Milk Wagon Drivers Union *v.* Meadowmoor Dairies, decided this day (312 U. S. 287, ante 836, 61 S. Ct. 552, 132 ALR 1200), we held that acts of

picketing when blended with violence may have a significance which neutralizes the constitutional immunity which such acts would have in isolation. When we took this case, 310 U. S. 620, 84 L. Ed. 1393, S. Ct. 1081, it seemed to present a similar problem. More thorough study of the record and full argument have reduced [fol. 283-43] the issue to this: is the constitutional guaranty of freedom of discussion infringed by the common law policy of a state forbidding resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute?"

The facts were that the union tried to picket Swing's beauty parlor. A permanent injunction was issued against the union on the ground that "peaceful persuasion" was forbidden because those who were enjoined were not in Swing's employ. The court then says:

"All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.' Thornhill *v.* Alabama, 310 U. S. 88, 105, 84 L. ed. 1093, 1104, 60 S. Ct. 736. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guaranty of freedom of speech. That a state has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular state regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the state. A state cannot exclude workingmen from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The interdependence of economic in-

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terest of all engaged in the same industry has become a commonplace. American Steel Foundries v. Tri-City [fol. 283-44] Central Trades Council, 257 U. S. 184, 209, 66 L. ed. 189, 199, 42 S. Ct. 72, 27 ALR 360. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's Case."

And again this liberalized principle was followed in

Bakery and Pastry Drivers and Helpers Local 802 of the International Brotherhood of Teamsters, et al., v. Wohl and Clatzman, decided March 30, 1942, 315 U. S. 769, 86 L. ed. 1178, 63 Sup. Ct. 816,

a case in which the union endeavored to induce peddlers engaged in the distribution of bakery goods to work only six days a week and to employ an unemployed union member one day a week. Upon refusal, peaceful picketing of bakers from whom these peddlers obtained their goods, and also picketing of places of business of the peddlers' customers, carrying signs notifying the public of the dispute, was instituted. Mr. Justice Jackson, who delivered the opinion of the Supreme Court, said:

"So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statute, and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course, that does not follow: one need not be in a 'labor dispute' as defined by statute law to have a right under the 14th amendment to express a grievance in a labor matter by publication, unattended by violence, coercion, or conduct otherwise unlawful or oppressive.

[fol. 283-45] "The respondents say that the basis of the decision below was revealed in a subsequent opinion

of the Court of Appeals, where it was said with regard to the present case that 'we held that it was an unlawful labor objective to attempt to coerce a peddler employing no employees in his business and making approximately thirty-two dollars a week, to hire an employee at nine dollars a day for one day a week.' Opera-on-Tour *v.* Weber, 285 N. Y. 348, 34 N. E. (2d) 349, 136 A. L. R. 267, writ of certiorari denied in 314 U. S. 615, ante, 495, 62 S. Ct. 96. But this lacks the deliberateness and formality of a certification, and was uttered in a case where the question of the existence of a right to free speech under the Fourteenth Amendment was neither raised nor considered.

"We ourselves can perceive no substantive evil of such magnitude as to mark a limit to the right of free speech which the petitioners sought to exercise. The record in this case does not contain the slightest suggestion of embarrassment in the task of governance; there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing. A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual. But so far as we can tell, respondents' mobility and their insulation from the public as middlemen made it practically impossible for petitioners to make known their legitimate grievances to the public whose patronage was sustaining the peddler system except by the means here employed and contemplated; and those means are such as to have slight, if any, repercussions upon the interests of strangers to the issue."

[fol. 283-46] Justice Douglas, concurring, in a separate opinion stated:

"If the opinion in this case means that a State can prohibit picketing when it is effective but may not prohibit it when it is ineffective, then, I think we have made a basic departure from Thornhill *v.* Alabama, 310 U. S. 88, 84 L. ed. 1093, 60 S. Ct. 736. We held in that case that 'the dissemination of information con-

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cerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution.' p. 102. While we recognize that picketing could be regulated, we stated (pp. 104, 105):

" 'Abridgement of the liberty of such discussion can be justified only where the clear danger of substantive evils arises under circumstances affording no opportunity to test the merits of ideas by competition for acceptance in the market of public opinion.' "

"But since 'dissemination of information concerning the facts of a labor dispute' is constitutionally protected, a State is not free to define 'labor dispute' so narrowly as to accomplish indirectly what it may not accomplish directly. That seems to me to be what New York has done here. Its statute (Civil Practice Act, § 876a) as construed and applied in effect eliminates communication of ideas through peaceful picketing in connection with a labor controversy arising out of the business of a certain class of retail bankers. But the statute is not a regulation of picketing per se—narrowly drawn, of general application and regulating the use of the streets by all picketeers. In substance it merely sets apart a particular enterprise and frees it from all picketing. If the principles of the Thornhill Case are to survive, I do not see how New York can be allowed to draw that line."

Of course, it is true that where there is violence and intimidation the court can, in the exercise of its equitable powers, issue an injunction.

[fol. 283-47] In

Milk Wagon Drivers Union of Chicago, Local 753, etc. et al., v. Meadowmoor Dairies, Inc., 312 U. S. 287, 85 L. ed. 836, 132 A. L. R. 1200,

decided February 10, 1941, the United States Supreme Court upheld the issuance of an injunction by the Illinois court, where that court had issued an injunction against all picketing in an industrial dispute where past picketing had been accompanied by violence and other unlawful conduct, so as to give belief that future picketing would be carried on with a continuance of illegal acts.

Mr. Justice Frankfurter, in the majority opinion, said:

"It must never be forgotten, however, that the Bill of Rights, was the child of the Enlightenment. Back of the guaranty of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guaranty of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution.

"Still it is of prime importance that no constitutional freedom, least of all the guaranties of the Bill of Rights, be defeated by insubstantial findings of fact screening reality. That is why this Court has the ultimate power to search the records in the state courts where a claim of constitutionality is effectively made. And so the right of free speech cannot be denied by drawing from a trivial rough incident or a moment of animal exuberance the conclusion that otherwise peaceful picketing has the taint of force."

"• • • The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though future picketing might be wholly peaceful. So the supreme court of Illinois found. We cannot say that such a find- [fol. 283-48] ing so contradicted experience as to warrant our rejection. Nor can we say that it was written into the Fourteenth Amendment that a state through its courts cannot base protection against future coercion on an inference of the continuing threat of past misconduct. Cf. Ethyl Gasoline Corp. *v.* United States, 309 U. S. 436, 84 L. ed. 852, 60 S. Ct. 618."

However, the court further stated that despite the opinion upholding the court of Illinois to enjoin, this decision did not qualify the Thornhill and Carlson decisions. In a strong dissenting opinion Justice Black said:

"It is on the basis of my study of the entire record that I rest my conclusion that the forfeiture of the right

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to free speech effected by the injunction is not warranted. In reaching this conclusion, I fully recognize that the union members guilty of violence were subject to punishment in accordance with the principles of due process of law. And some of them have in fact been prosecuted and convicted. Punishment of lawless conduct is in accord with the necessities of government and is essential to the peace and tranquility of society. But it is going a long way to say that because of the acts of these few men, six thousand other members of their union can be denied the right to express their opinion to the extent accomplished by the sweeping injunction here sustained. Even those convicted of crime are not in this country punished by having their freedom of expression curtailed except under prison rules and regulations, and then only for the duration of their sentence.

"No one doubts that Illinois can protect its storekeepers from being coerced by fear of damage to their property from window-smashing, or burnings or bombings. And to that end Illinois is free to use all its vast resources and powers, nor should this Court stand in the way so long as Illinois does not take away from its people rights guaranteed to them by the Constitution of the United States."

[fol. 283-49] In

Lafayette Dramatic Productions v. Ferentz et al., 305 Mich. 193, 9 N. W. (2d) 57, 145 ALR 1158,

decided April 8, 1943, a case in which the defendant union demanded that the plaintiff theatre employ union musicians. In reversing the lower court, which had dismissed plaintiff's complaint asking that a contract it had entered into with the defendant union under duress be declared null and void, and also for injunctive relief because a labor dispute was involved, the court said:

"It is plain that defendants' demand that plaintiff employ musicians had no reasonable connection with any dispute or controversy relating to wages, working conditions, hours of work, health, safety, the right of collective bargaining or the protection of labor from abuses. The situation did not involve any dispute

between plaintiff and members of defendant musicians' union or between plaintiff and members of defendant stage hands' union regarding wages, working conditions or regarding other legitimate controversial labor matters. The situation involved only the question of the right of the defendant unions to combine their efforts for the purpose of compelling plaintiff either to employ an orchestra it did not need or want or to submit to a strike of its employees, which would have prevented the opening and operation of its theatre. If the object sought to be obtained by defendants was not a lawful labor objective, the court would be justified in exercising control of their acts."

In that case the court relied on:

Carpenters and Joiners Union v. Ritter's Cafe, 315 U. S. 722, 724, 62 S. Ct. 807, 808, 86 L. ed. 1143,

decided March 30, 1942, where the defendant union picketed the restaurant of Ritter because he employed nonunion help in the construction of a building a mile and a half from the restaurant, and that had no connection with the restaurant. In upholding the Texas court, which issued a restraining order, Mr. Justice Frankfurter said:

[fol. 283-50] "In the circumstances of the case before us Texas has declared that its general welfare would not be served if, in a controversy betwen a contractor and building workers' unions, the unions were permitted to bring to bear the full weight of familiar weapons of industrial combat against a restaurant business, which, as a business, has no nexus with the building dispute but which happens to be owned by a person who contracts with the builder. The precise question is, therefore, whether the Fourteenth Amendment prohibits Texas from drawing this line in confining the area of unrestricted industrial warfare."

The Lafayette opinion then continues differentiating the present case from *Lauf v. E. G. Shinner & Co.* that was relied on:

"Defendants contend, and the trial court held, that the present case involved a labor dispute within the meaning of Act No. 176, Pub. Acts 1939 (Comp. Laws

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Supp. 1940, § 8628-1 et seq.) (Stat. Ann. 1942 Cum. Supp. § 17, 454 (1) et seq.), being an act to create a board for the mediation of labor disputes. By such contention defendants apparently sought to bring the matter under the jurisdiction of the State labor mediation board. Relying upon Lauf *v.* E. G. Shinner & Co., 303 U. S. 323, 58 S. Ct. 578, 88 L. ed. 872, the trial court held that a 'labor dispute or controversy' was involved in the present cases. The question in the Lauf case was whether or not the factual situation presented constituted a labor dispute within the terms of Wisconsin Statutes 1937, § 103.62 (3). In defining the term 'labor dispute' such statutory provision was much more comprehensive than the corresponding provision of our State statute cited above, in that it also provided 'or any other controversy arising out of the respective interests of employer and employee.' The Lauf case is not determinative of the question before us. We are convinced that the present case does not involve a labor dispute within the meaning of our State statute. Furthermore, defendants may not claim that a bona fide labor dispute is involved when the object they [fol. 283-51] sought to accomplish was an unlawful labor objective."

That a union may peaceably put its case before the public even though no employer-employee relationship exists was held in

Cafeteria Employees Union v. Angelos, et al., 320 U. S. 293, 64 S. Ct. 126, 88 L. ed. 58.

Picketing was by a union against an employer who operated his own restaurant on a small scale, conducting the business without the aid of any employee, and the sole purpose of the picketing was to compel the proprietor to employ union labor. The United States Supreme Court, in reversing the lower court which had issued an injunction, said:

"The Court here, as in the Swing Case, was probably led into error by assuming that if a controversy does not come within the scope of state legislation limiting the issue of injunctions, efforts to make known one side of an industrial controversy by peaceful means

> may be enjoined. But, as we have heretofore decided, a state cannot exclude working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' American Federation of Labor *v.* Swing, 312 U. S. at 326, 85 L. Ed. 857, 61 S. Ct. 568."

and the court, further distinguishing the situation that existed in *Milk Wagon Drivers Union v. Meadow Moor Dairies,* said:

> "The present situation is thus wholly outside the scope of the decision in Milk Wagon Drivers Union *v.* Meadowmoor Dairies, 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552, 132 ALR 1200. There we sustained the equity power of a state because the record disclosed abuses deemed not episodic and isolated but of the very texture and process of the enjoined picketing. But we also made clear 'that the power to deny what otherwise [fol. 283-52] would be lawful picketing derives from the power of the states to prevent further coercion. Right to free speech in the future cannot be forfeited because of dissociated acts of past violence.' 312 U. S. at 296, 85 L. ed. 842, S. Ct. 552, 132 ALR 1200."

In

> *American Federation of Labor et al. v. Bain* (Ore.) 106 Pac. (2d) 544, 130, ALR 1278,

decided October 22, 1940, the court was called upon to pass upon the constitutionality of a statute relating to labor disputes. Sections 1 and 3 of the Act provided, in substance, that the term "labor dispute" meant and included only an actual bona fide controversy in which the disputants stood in proximate relation of employer and the majority of his employees and which directly concerned matters directly pertaining to wages, hours, or working conditions of the employees of the particular employer directly involved in the controversy. That it was unlawful to picket premises used by an employer unless there was an actual bona fide existing labor dispute between the employer and his employees and that it was also unlawful to boycott directly or

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indirectly an employer not directly involved as a party to a labor dispute.

The question was whether the prohibition of picketing and boycotting in these sections invaded the plaintiff's fundamental rights and liberties of freedom of speech and of assemblage. It was agreed that these sections constituted the heart of the act and that reading them together they meant picketing and boycotting were unlawful in all cases save those in which an employer and the majority of his employees were engaged in an actual, bona fide controversy which directly concerned matters pertaining to wages, hours, or working conditions. The court reviewed at length many decisions, commencing with *Lovell v. Griffin*, 303 U. S. 444, 82 L. ed. 949, decided March 29, 1938, down to the Thornhill and Carlson cases, decided April 22, 1940.

The Oregon court, in answer to the argument that the act was valid under the reserved powers of the state, said:

> "The proponents of the statutes insisted that they were enacted in the exercise of the reserved powers of [fol. 283-53] the states to pass laws for the promotion of the public peace, safety and general welfare; to prevent the occasions of disorder, violence and the destruction of property, and unwarranted interference with legitimate business. These contentions were answered by the court in the Thornhill case. It was said: 'We hold that the danger of injury to an industrial concern is neither so serious nor so imminent as to justify the sweeping prescription of freedom of discussion embodied.'"
>
> "We have thus, at more than ordinary length, reviewed these decisions, because the plaintiffs are here claiming that fundamental rights, secured to them by the Constitution of the United States, are invaded by the challenged statute. In the field of federal constitutional law the Supreme Court of the United States is the final arbiter. Its decisions as to the meaning of the provisions of the Constitution bind us all—state judges, under their oaths of office, no less than others. Our own personal, individual views as to the soundness of such decisions are immaterial. Unless, therefore, some real, not fanciful, basis of distinction exists between the prohibitions of the Alabama statute and the California ordinance declared repugnant to constitu-

tional guaranties in these cases, and the like restrictions on the conduct of individuals contained in the statute here under consideration, this court has no other alternative than to declare the statute unconstitutional."

Then as to the contention that there must be an actual bona fide labor dispute, the court said:

"No claim is made by the proponents of the present statute that in defining the term 'labor dispute' it was intended to declare that an actual labor dispute could not lawfully exist unless the majority of employees of a particular employer were participants. Such a construction would result in imputing to the people a purpose to ignore actualities. Counsel for the defendants agree with the view of the court below that the definition of a labor dispute in the statute is 'merely a draftsman's device for shortening the phraseology of the [fol. 283-54] act,' by describing the class of cases to which the prohibition on picketing does not apply. In this construction we concur. Thus, there remains a wide field of labor controversies in which picketing is declared to be unlawful. Hence, there is no room for a contention—and none has been made—that the Thornhill and Carlson cases are not controlling, because the Supreme Court limited its decisions to the right to publicize the facts of a labor dispute. The prohibitions of the statute under review clearly include picketing in bona fide labor controversies."

In

E. L. Kearns Company v. Joseph G. Landgrat et al., 128 N. J. Eq. 441, 16 At. (2d) 623, 131 ALR 1063,

decided December 12, 1940, a case in which there was neither a strike nor a dispute between employer and employees, the court, by a divided opinion, held that a permanent injunction restraining the union from distributing circulars advising that E. L. Kearns' beverages were non-union and requesting the purchase of union-made beverages could not be upheld, the court said:

"We are of the opinion, and so hold, that, under the circumstances exhibited in the instant case, the re-

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straint imposed constitutes an infringement of the union's right of freedom of speech and freedom of press both under our State and Federal Constitutions, notwithstanding the fact that there was no strike nor dispute between complainant and its employees. For an analogy in principle compare, Thornhill *v.* Alabama, supra; Carlson *v.* California, 310 U. S. 106, 60 S. Ct. 746, 84 L. ed. 1104."

The note following this case in 131 AYR shows the more liberal attitude that has developed, and states:

"In Seattle Brewing & Malting Co.*v.* Hansen (1905); CC 114 F 1011, which it will be noted was decided at a time when the attitude of the courts toward the activities of labor unions was less liberal, it was held that [fol. 283-55] conduct of various members of labor unions, who, in addition to making threats to various handlers of beer produced by a brewery with which they were in dispute, circulated notices among the public, some of the notices stating: 'Organized labor and friends: Don't drink scab beer:' and naming various kinds of beer as 'unfair,' and others of them stating: 'Guard your health by refusing to drink unfair beer,' naming various beers as unfair, including that manufactured by the complainant, constituted a boycott which would be enjoined, the court saying: 'Those things tend to unfairly obstruct the business of the complainant, and in that far these defendants are wrong, and it is the duty of the court to restrain them from doing anything that will interfere with the complainant's business.' "

In

People of the State of New York v. Hans Muller, et al., 286 N. Y. 281, 36 N. E. (2d) 206, 136 ALR 1450,

the syllabus says:

"2. Peaceful picketing by the members of a labor union in front of a business served by the union is an exercise of a right of free speech guaranteed by the Constitution of the United States."

And at page 1452 of the A. L. R. report the court has this to say respecting picketing:

> "The picketing is for the purpose of promoting the lawful interests of a labor union in a labor dispute. Goldfinger *v.* Feintuch, 276 N. Y. 281, 11 N. E. (2d) 910, 116 A. L. R. 477. There is here a 'labor dispute' as that term is defined in section 876-a of the Civil Practice Act even under the restrictive interpretation of the scope of the statute by this court in Opera on Tour, Inc. *v.* Weber, 286 N. Y. 348, 34 N. E. (2d) 349, 136 A. L. R. 267. Even were that not true, however, peaceful picketing by the members of a union in front of a business served by the union is the exercise of a right of free speech guaranteed by the Constitution of the United [fol. 283-56] States. American Federation of Labor *v.* Swing, 312 U. S. 321, 61 S. Ct. 569, 85 L. ed. 855, decided February 10, 1941; Bakery and Pastry Drivers and Helpers Local 802, decided by the Supreme Court of the United States June 2, 1941. Construction of the Federal Constitution by the Supreme Court of the United States is binding on all State courts."

It will be noted that the court said there was a labor dispute even under the restrictive interpretation of the statute, and that even if this were not true, peaceful picketing is the exercise of free speech.

There is a strong dissenting opinion by Justice Finch, who stated, p. 1453:

> "We are thus brought to a consideration of the fundamental question involved, namely, whether picketing of a storekeeper, who has acquired and is now using as an ultimate consumer a burglar alarm apparatus, is lawful. May this complainant be coerced into taking sides in a labor dispute in another industry to which he was not a party, in which he has no interest, and where no legitimate action of his could dispose of the controversy? If the complainant had submitted to the coercion of the union and its members by allowing them to service the burglar alarm system, he would have subjected himself to liability for damages for breach of contract. On the other hand, if he refused, his business and trade would suffer serious jeopardy by the continued picketing of his premises. Looking at the matter

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realistically, the parading of pickets in front of a retail store, even though the conduct of the picket is peaceful and orderly, seriously interferes with the business of the store. There are many persons among the population who, because of personal convictions, will not cross a picket line besides many timid persons who fear bodily harm or other retaliation, and hence choose another store,"

* * * * * * *

"The picketing of this ultimate consumer, who is not engaged in the industry in which the labor dispute has [fol. 283-57] arisen, provides a true secondary boycott which has always been held an unlawful labor objective and which this court has recently condemned. In People *v.* Bellows, 281 N. Y. 67, 77, 22 N. E. (2d) 238, 242, this court said: 'In this particular we differ with the Special Sessions and hold that such picketing, which has been declared unlawful by this court, does constitute disorderly conduct.' "

Our own Supreme Court has indicated a liberal attitude towards labor that has been in consonance with the decisions of the Supreme Court of the United States, for in:

Denver Local Union No. 13 et al. v. Perry Truck Lines, Inc., et al., 106 Colo. 25, at p. 32,

decided March 18, 1940, the court said:

"Prior to the adoption of the federal and state Norris-LaGuardia Acts the Judicial conception of a 'labor dispute' was based primarily on the construction of section 20 of the Clayton Act (29 U. S. C. A., Labor, § 52), which was to the effect that courts had no jurisdiction to issue injunctions to restrain peaceful picketing where the dispute was between employers and employees, but otherwise had such jurisdiction. The Norris-LaGuardia legislation, federal and state, was adopted to allay a deep and bitter feeling on the part of the laboring classes, caused by a narrow construction of the words 'labor dispute' by the judicial branch of the government, and it resulted in a more comprehensive definition of the terms by legislative action, so as to include all legitimate labor controversies involving all

terms and conditions of employment, 'regardless of whether or not the disputants stand in the proximate relation of employer and employee.' This enlarged definition, to permit peaceful efforts by a labor organization to unionize a particular business, was foreshadowed by Chief Justice Taft in the case of American Steel Foundries *v.* Tri-City Council, 257 U. S. 184, 42 Sup. Ct. 72, 66 L. ed. 189, where this eminent jurist said (pp. 209, 210): 'The strike became a lawful instrument [fol. 283-58] in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild.

And again in:

Denver Local Union No. 13 of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America et al. v. Buckingham Transportation Co. et al., 108 Colo. 419, at 424,

decided October 27, 1941:

"When the district court was called upon to decide this case the authorities generally were in an unsettled state as to the basic question involved, and no decision of this court on that subject had been promulgated. That state of uncertainty has been dissipated by recent decisions of the United States Supreme Court, as well as our own. We recently held, in Denver Union *v.* Perry Truck Lines, 106 Colo. 25, 101 P. (2d) 436, that under the State Norris-LaGuardia Act, a labor dispute as therein defined might exist between an employer and a labor union even though there was no controversy between such employer and his own employees. Also, in that case—presaging the holding of the Supreme

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Court of the United States in Thornhill *v.* Alabama, 310 U. S. 88, Sup. Ct. 736, 84 L. Ed. 1093—we held that peaceful picketing had its basic roots in the constitutional guaranties of liberty and freedom of speech. Under these decisions and others of the United States Supreme Court hereinafter cited, there is now no question that a state may not by its common-law or statu- [fol. 283-59] tory policy prohibit peaceful persuasion, through peaceful picketing, notwithstanding the occasioning labor dispute is not an immediate employer-employee one."

The most recent case the Court has examined is:

State v. Superior Court, 164 Pac. (2d) 662,

decided December 12, 1945, a Washington case, in which there is a careful review of many authorities, just as there was in the *American Federation of Labor v. Bain* case:

"Relators contend that the problem presented in the cases at bar is one of freedom of speech, a right guaranteed by the First Amendment to the Constitution of the United States reading as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'

"Relators argue that peaceful picketing is but a manifestation and a function of the exercise of freedom of speech and can be restrained only upon those grounds and conditions which warrant restraint in any other case involving freedom of speech. The right of freedom of speech guaranteed by the First Amendment, and originally confined to federal jurisdictions and to acts of Congress, has been extended to protect against encroachment of judicial, legislative or administrative acts of the various states under the scope of the Fourteenth Amendment to the United States Constitution which provides * * * 'No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * * without due process of law; nor deny to any

person within its jurisdiction the equal protection of the laws."

The court then states:

"In S. and W. Fine Foods, *v.* Retail Delivery Drivers, 11 Wash. 2d 262, 118 P. 2d 962, we followed American Federation of Labor *v.* Swing, 312 U. S. 321, [fol. 283-60] 61 S. Ct. 568, 85 L. ed. 855, and overruled Safeway Stores *v.* Retail Clerks' Union, 184 Wash. 322, 51 P. 2d 372, Adams *v.* Building Service Employees, 197 Wash. 242, 84 P. 2d 1021; Fornill *v.* Auto Mechanics Union, 200 Wash. 283, 93 P. 2d 422; and Shively *v.* Garage Employees, 6 Wash. 2d 560, 108 P. 2d 354. We held that the right of a labor union peacefully to picket the plant of an employer is protected by the First and Fourteenth Amendments to the Federal Constitution guaranteeing the right of free speech, even if there is no employer-employee relationship existing between the employer and the members of the union. We held that injunction would not lie to restrain members of a salesmen's union from picketing the warehouse of a wholesale dealer in an endeavor to compel the dealer's salesmen to join the union, even though such picketing resulted in the refusal of the dealer's warehousemen to cross the picket line and in the refusal of the union teamsters to haul its merchandise, where it appeared that the picketing was peaceable and that it was not associated with a secondary boycott. See Weyerhauser Timber Co. *v.* Everett District Council et al, 11 Wash. 2d 503, 119 P. 2d 643 to the same effect."

It will be noted that two of the Washington cases, namely, *Safeway Stores v. Retail Clerks' Union* and *Adams v. Building Service Employees, supra,* which were cited by plaintiffs in the instant case, and to which this court has made specific reference, have been overruled. The Washington Court then concludes:

"Peaceful picketing is a manifestation of the exercise of freedom of speech and it can be restrained only upon those grounds and conditions which warrant restraint in any other case involving freedom of speech. The test upon which abridgment of speech may be justified '• • • is whether the words used are used

in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent * * *" Schenck *v.* United States, 249 [fol. 283-61] U. S. 47, 52, 39 S. Ct. 247, 249, 57 S. Ct. 732, 81 L. ed. 1066, and Thomas *v.* Collins, 323 U. S. 516, 65 S. Ct. 315. * * *

"The peaceful picketing in the cases at bar is but an exercise of the right of freedom of speech and is not of such a nature as to warrant the restraining orders."

We believe that in accord with what the Supreme Court of the United States, as well as our own Supreme Court, have held, that the legislature could not prohibit peaceful stranger picketing even if it wanted to, because all peaceful picketing is an exercise of the constitutional guaranty of free speech.

We recognize that all courts agree that violence and intimidation on the part of pickets are unlawful and that they almost unanimously condemn the use of false labels and dishonest posters and banners, and that they hold secondary boycotts to be unlawful. But unfortunately, the courts do not generally recognize in the specific cases the legality of peaceful picketing.

In the instant case, were the objectives of the defendants lawful? Were the means pursued to obtain these objectives lawful? If the purpose of the defendants was to organize the dairies and truck lines serving the milk industry in Denver, in order to secure to workers in that industry the benefits of collective bargaining, with respect to betterment of wages, hours of work, and other terms and conditions of employment, the purpose was lawful. If there was no violence, intimidation, threats, or other unlawful conduct but only peaceful persuasion, then the means were lawful. If the purpose was lawful and the means lawful, then any law that would prohibit, infringe, or so restrict this lawful purpose so as to make its accomplishment impossible would be, in the opinion of the court, unconstitutional. Of course, the State, without the present statute, can prevent violence, intimidation, threats, or other unlawful acts. The court feels that the objectives of the defendants and the means used to secure those objectives were lawful, and so holds. It has been explicity and repeatedly affirmed, not only

[fol. 283-62] by the Supreme Court of the United States, but by our own Supreme Court as well, that freedom of speech, freedom of the press, freedom of assembly, when for a lawful purpose, are rights of personal liberty secured to all persons by the due process clause of the Fourteenth Amendment of the Constitution of the United States. They are, indeed, precious rights.

The court feels that the definition of a 'labor dispute', as defined in the Colorado Labor Peace Act of 1943, is too strained and narrow. That if the conduct of the defendants can be classified so as to make them guilty of unfair trade practices under that narrow definition, and if this definition be permitted to stand, that there has been an invasion of their constitutional rights.

Contention has also been made that certain of the plaintiffs, who are common carriers, are entitled to an injunction because under the law a common carrier operating under a permit of Public Necessity and Convenience, is under a duty to carry property tendered to it by the public for shipment. There are cases such as the

> *Burlington Transportation Co. v. Gordon Hathaway et al, (Ia.)* 12 N. W. (2d) 167, 149 A. L. R. 1238,

decided December 14, 1943:

> "Upon this record one clear reason for the granting of the injunction is readily apparent. The concerted action of the defendant union had for its object an act prohibited by law. The plaintiffs are all common carriers and as such they were bound to carry property tendered by the public for shipment. • • •
>
> "When the plaintiffs obtained their permits to operate as common carriers, they undertook the duty to transport the freight which the public tendered to them for transportation. The failure to carry out this duty to transport would not be excused by showing that its employees refused to obey the employers' order."

[fol. 283-63] However, as stated in the note to this case in the A. L. R. edition:

> "No one has, at least in recent times, suggested that the employees of a common carrier or other public utility are not entitled to strike, or to take other measures constituting the customary concomitant of a labor

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dispute, merely because such measures would interfere with the performance of the employer, in its capacity as common carrier or other public utility, of its duty to the public."

Contention has also been made that the acts of the defendants in going to Boulder and congregating outside of the Austin Brothers garage *was* unlawful. To find so would be the denial of the right of lawful assembly.

The court said in

Frank Hague, etc. v. Committee for Industrial Organization et al, 307 U. S. 496-533, 83 L. ed. 1423 at 1436,

"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied."

Could the union peaceably picket the Piggly-Wiggly Stores, and if they had would this not have constituted a secondary boycott?

In

Goldfinger v. *Feintuch,* 276 N. Y. 281, 11 N. E. (2d) 910, 116 A. L. R. 477, at 280,

[fol. 283-64] decided December 7, 1937, the court said:

"Likewise it is illegal to picket the place of business of one who is not himself a party to an industrial dispute to persuade the public to withdraw its patronage generally from the business for the purpose of coercing the owner to take sides in a controversy in which he has no interest. Nor it is legal to threaten to ruin the

custom and trade generally or to accost or interfere with customers at the entrance to the store. Disorderly conduct, force, violence, or intimidation by pickets should be sternly suppressed by the police and administrative authorities.

"Within the limits of peaceful picketing, however, picketing may be carried on not only against the manufacturer, but against a non-union product sold by one in unity of interest with the manufacturer who is in the same business for profit."

And then further held:

"We do not hold more than that, where a retailer is in unity of interest with the manufacturer, the union may follow the nonunion goods and seek by peaceful picketing to persuade the consuming public to refrain from purchasing the nonunion product, whether that is at the plant of the manufacturer or at the store of the retailer in the same line of business and in unity of interest with the manufacturer."

We hold that there was such a unity of interest between the Beach Milk Company and the Piggly-Wiggly stores that the actions of the union did not constitute a threat to establish a secondary boycott.

Holding that the objectives of the defendants and the means pursued to obtain those objectives were lawful, and that to hold otherwise would invade the constitutional rights of the defendants, the temporary injunction heretofore issued by Judge Steele is dissolved.

The motion of the defendants to dismiss in each and all of the five cases is hereby granted.

[fols. 283-65—284-310] Done and signed in open court this 27th day of February A. D. 1946.

By the Court, (S.) Joseph J. Walsh, Judge.

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[fol. 311] ORDER DENYING MOTION TO QUASH

Motion to quash service of summons on The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union denied.

Motion for new trial held unnecessary and dispensed with.

Ten days Stay of Execution, sixty days for Reporter's transcript.

Motion of defendants to dismiss granted. Temporary injunction heretofore issued dissolved.

ORDER FOR JUDGMENT

Order that judgment be entered in favor of defendants and against the plaintiffs for dismissal and costs.

JUDGMENT

Judgment that temporary injunction be dissolved and cause be dismissed and that defendants recover their costs in Cause No. 45099.

PLAINTIFF'S EXHIBIT "C," A-45099

This Agreement, made and entered into this — day of April, 1945, by and between —— ——, Denver, Colorado, hereafter referred to as the "Employer," and the Milk [fol. 312] Drivers' and Dairy Employees', Local Union No. 537, Denver Colorado and vicinity, hereafter referred to as the "Union."

Article 1

All male employees working under the classifications set up in Article 3 and who are subject to the jurisdiction of the Union, shall be members of the Union, except seasonal employees as described in Article 6. Where new employees are hired, not members of the Union, they shall make application to become members with- fifteen (15) days. The union agrees that any new employees of the Employer, coming under the jurisdiction of the Union, as enumerated in Article 3, who are hereafter hired and are not members of the Union, shall upon making application and offering to qualify for membership in the Union, be promptly accepted to membership without prejudice or discrimination unless the applicant is specifically denied membership in the union

by the provisions of the National Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

It is agreed that the Employer will notify the Union in writing on the first day of regular employment of all employees subject to the jurisdiction of the Union.

[fol. 313] Article 2

No employee of the Employer, subject to the jurisdiction of the Union, shall be discharged for upholding union principles.

Article 3 provides that the Agreement shall relate only to male employees working in certain classifications and subject to the jurisdiction of the union.

Article 4 excludes full-time cream testers, foremen or superintendents from the wage scales of the Agreement.

Article 5 provides owners of individual business may perform any work similar to that of employees.

Article 6 deals with the employment of seasonal employees, who by its terms are not required to become members of the union during the period beginning May 15 and ending September 15.

Article 7 provides for one weeks's notice or one week's pay on laying off regular employees.

Article 8 reserves the right to employers to discharge for dishonesty, incompetency, etc.

Article 9, the employer agrees to provide a recognized record for the purpose of recording time worked by employees.

Article 10 requires uniforms to have union label and be laundered by the employer.

Article 11 provides the employer shall designate the starting and quitting time of employees.

[fol. 314] Article 12 relates to responsibility of drivers for collection of accounts.

Article 13 regulates vacations and pay therefor.

Article 14 regulates sick leave and pay during the same.

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Article 15 provides that no driver shall service his truck or make repairs on same except minor adjustments; does not apply to drivers owning their own equipment; drivers permitted to wash trucks once a week on company's time.

Article 16, no unfavorable change in working conditions or reduction in wages shall result from the signing of the Agreement.

Article 17 relates to period of time and manner of making changes in wage rates and commissions scheduled.

Article 18 provides that all hand milkers shall not milk more than twenty-four cows in each twelve-hour period, except strippers, and that milkers may be required to perform general ranch work without any reduction in pay.

Article 19 deals with wages and commissions in case a route is cut by the employer.

Article 20 provides no milk route salesman shall work over fifty-four hours in any one week, and that each employee covered by Article 3 shall be entitled to four days of rest in each 28-day period, and a rest period of 8 hours [fol. 315] after working a full shift, but no penalty for violation of hours scheduled in cases of emergency, etc.

Article 21 provides for setting up an Industry Committee to adjust disputes or controversies between the parties and for arbitration.

Article 22 deals with commissions payable to wholesale milk route salesmen.

Article 23 requires wages to be paid semi-monthly and commissions to be paid monthly.

Article 24 deals with seniority.

Article 25 deals with right of employer to discontinue or curtail operation of any department or group of employees in case of war, defense emergencies, etc.

Article 26 provides agreement by the Union that during the term of Agreement it shall not cause or permit any strikes, or engage in any sympathetic strikes, and the employer agrees not to engage in any lockouts, and that the union and members will not engage in union activities on employers's time or premises without his permission.

Article 27 provides for arbitration in all cases of disputes respecting the Agreement.

Article 28 provides for dates of beginning and expiration of agreement with provision for review on specified dates with relation to wages, etc.

[fol. 316] PLAINTIFF'S EXHIBIT D, No. A-45099

Rates of Pay and Commissions Retail Milk Route Salesmen.

1. Retail dairies shall be divided into two classes:

Class A dairies having salesmen whose principle duties are delivery to the customer. In addition to delivery duties these salesmen shall make every effort to return all empty containers.

The Employer shall have the right to determine whether his delivery operation shall be under Class A or Class B as described above.

Class B, employees in this classification are the salesmen who sell and deliver the products of the Employer and whose duties also include a systematic, regular and conscientious effort to promote additional sales and collect money for merchandise sold. He shall also make every effort to return all empty containers.

Class B retail route sales shall receive a base pay of $80.00 per month—plus a commission of six (6%) per cent on collected sales of less than $35.00 per day and seven (7%) per cent on collected sales over $35.00 per day. Butter and egg commissions shall be at the rate of four (4%) per cent. All wholesale milk sales made from retail route shall be paid for at the rate of four (4%) per cent commission, ex-
[fol. 317] cept school milk on which a commission of two and one-half (2½%) per cent shall be paid. Any school being served by a retail route will be placed on a wholesale route when it can be conveniently done.

Retail route salesmen in Class B shall be guaranteed $145.00 per month. When a new Class B retail route is started by the Employer the retail route salesman for a period of ninety (90) days shall be guaranteed $135.00 per month.

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Wholesale Milk Route Salesmen

2. Section 1. Wholesale milk route salesmen shall have two classifications—downtown and outlying. Commissions shall be as follows:

	Outlying	Downtown
Milk Sales	3¾%	2¼%
Bottles returned	12½ cwt.	12½ cwt.
Cans returned	1c each	1c each
Butter	1c per pound	½c per pound
Process Cheese	½c per pound	½c per pound
Eggs	1c per dozen	1c per dozen
All other merchandise	4%	4%

Wholesale milk route salesmen shall be guaranteed $155.00 per month.

When a new wholesale milk route is started by the Employer the salesman for a period of ninety (90) days shall be guaranteed $150.00 per month.

[fol. 318] Section 2. All regular route salesmen selling a majority of their load, or loads, to government reservations which are under government supervision shall be paid a minimum of $155.00 per month.

Ice Cream Salesmen

3. Ice Cream salesmen shall be paid on the following basis: $5.50 per day plus 1c commission per gallon on all bulk, brick, sherbert and custard; ½c per dozen on novelties; ½c each for cakes and pies; 2% commission on other merchandise.

Butter Route Salesmen

4. Butter route salesmen on routes which are predominantly butter routes shall have a guarantee of $155.00 per month. Commission rates for individual employees to be worked out between the Union and the Employer on the basis of different job conditions.

When a new butter route is started by the Employer the butter route salesman for a period of ninety (90) days shall be guaranteed $150.00 per month.

New Route Salesmen

5. All newly employed route salesmen shall receive $30.00 per week for four (4) weeks and thereafter shall receive the regular scale of wages for the class of work performed.

[fol. 319] Relief Route Salesmen

6. Wholesale relief salesmen $174.50 per month. Butter relief salesmen $154.50 per month.

Class B retail relief route salesmen $169.50 per month. This increase shall not apply to men who have been promoted to route salesmen.

Plant Employees

7. Plant employees who are male employees engaged in the production or actual handling of dairy products on the premises shall be paid on the following basis:

(a) All men doing work in the following jobs shall be paid a wage of not less than $39.00 per week for forty-eight (48) hours as set forth below:

40 hours @ .75	$30.00
8 hours @ 1.125	9.00
	$39.00

For all hours worked in excess of forty-eight (48) hours per week, $1.125 per hour Relief Man, Pasteurizer, Standardizer, Vacuum Pan Operators, Separator Operator, Head checkers, Shipping clerk, Ice cream makers and mix men, Churnman, Roller man, Cheese maker.

b. All men doing work in the following jobs shall be paid a wage of not less than $36.40 per week for forty-eight [fol. 320] (48) hours as set forth below:

40 hours @ .70	$28.00
8 hours @ 1.05	8.40
	$36.40

For all hours worked in excess of forty-eight (48) hours per week, $1.05 per hour. Weigher and sampler, (head)

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Bottle filler, paper and glass; Butter packaging and cutter machine operator, Man in charge ice box.

c. All men doing work in the following jobs shall be paid a wage of not less than $35.10 per week for forty-eight hours (48) hours as set forth below.

40 hours @ .675	$27.00
8 hours @ 1.0125	8.10
	$35.10

For all hours worked in excess of forty-eight (48) hours per week, $1.0125 per hour. Night loaders.

d. All employees not employed in the above jobs shall be known as general plant and shall be paid a wage of not less than $33.80 per week for forty-eight (48) hours set forth below:

40 hours @ .65	$26.00
8 hours @ .975	7.80
	$33.80

[fol. 321] For all hours worked in excess of forty-eight (48) hours per week, 97½c per hour.

All new employees shall begin work in the Class D bracket.

Seasonal employees, as provided for in Article 6, shall be employed at an hourly rate of pay to be determined between the Employer and the employee.

Step-up Clause. An Employer has ninety days in which to determine the suitability of an employee being stepped up. He may, however, decide earlier. Promotion shall be made from present personnel, if possible.

Job classifications shall be adjusted between Union and Employer, and A-B classifications shall not apply to helper.

Rate of Pay for Day's Work. A man who works at least five hours in any one classification shall be paid in that classification.

Holiday Pay. The Companies shall pay all plant employees overtime at the rate of time and one-half their regular hourly straight time rates for any work performed on New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

Light Special Delivery

8. Employees working on light special delivery shall re-
[fol. 322] ceive $30.00 per week for forty-eight (48) hours of work as set forth below:

40 hours @ .577	$23.08
8 hours @ .865	6.92
	$30.00

For all hours worked in excess of forty-eight (48) hours per week, 86½c per hour.

Heavy Special Delivery Employees

9. Employees working on heavy special delivery shall receive $35.00 per week for forty-eight (48) hours of work as set forth below:

40 hours @ .673	$26.92
8 hours @ 1.01	8.08

For all hours worked in excess of forty-eight (48) hours per week, $1.01 per hour.

Frigidaire Maintenance Employees

10. Employees working on frigidaire maintenance shall be paid on the following basis for forty (40) hours of work:

Man in charge	$40.00 per week
Helpers	$30.00 per week

Milkers and Farm Hands

11. Milkers and farm hands shall be paid on the following basis:

Machine Milkers	$115.00 per month
Hand Milkers	$105.00 per month
Farm Hands	$105.00 per month

[fol. 323] It is agreed that the above rates for milkers and farm hands will be subject to reduction after the war.

Apprentice Milkers shall be paid $80.00 per month for a period of not to exceed sixty (60) days from date of first regular employment; provided, however that an apprentice who can effectively milk not less than twenty (20) cows in

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each twelve (12) hours period shall immediately receive the wage scale of $105.00 per month.

Relief milkers shall receive wages for the class of work performed that day.

It is agreed that where the Employer operates a boarding house and the employee elects to board and room with the employer, the maximum of $20.00 per month shall be charged for board and room.

It is agreed that the Union fee for initiation for milkers and farm hands shall be $12.50.

Bonus and Point Money

Bonus, point money and awards shall be optional with the Employer.

The parties hereto agree that the change in the vacation clause as provided in Article 13 of the master contract, the change in the payment of commissions in event of bona fide sickness as provided in Article 14 of the master contract, and the changes in the wage scales, the monthly guarantee and the commission basis (which are indicated by asterisk [fol. 324] on this schedule) shall be submitted to the Ninth Regional War Labor Board for approval. These changes when approved by the War Labor Board will be in effect from and after April 1, 1945.

In Witness Whereof, the parties above named have signed their names and affixed the signatures of their representatives this — day of ——, 1945.

—— ——, Company, by —— ——. Milk Drivers' and Dairy Employees' Local Union No. 537, by —— ——.

Plaintiff's Exhibit A;

Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Articles I to XXIII, including Article II, Sec. 2 (a), "Membership" reading as follows:

> "Any person 18 years or over, of good moral character, employed in the craft or the various employments over which this International has jurisdiction, shall be eligible to membership in this organization. Provided, that hereafter no person shall be eligible for membership in this organization who has not declared his

intention to become a citizen of the United States, if a [fol. 325] resident of the United States, or of Canada, if a resident of Canada, or who, having declared such intention, has permitted same to lapse."

PLAINTIFF'S EXHIBIT B.—By-Laws of Milk Drivers and Dairy Employees Union, Local No. 537, comprising Articles I to Article XV, including Article IV, Sec. A, reading as follows:

"Any person to become a member of this Union must be a competent workman, able to command the average wages prevailing in this locality and be over 16 years of age."

PLAINTIFF'S EXHIBIT E, Application blank for membership in International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

PLAINTIFF'S EXHIBIT F; Receipt to Ray Walker, Jr. Application $3.00, dated September 7, signed "H. Coffey, Secretary-Treasurer."

PLAINTIFF'S EXHIBIT G; official Due Card issued to Ray Walker, Jr., September 7, 1945, by Local Union No. 537.

PLAINTIFF'S EXHIBIT L; Wage scale of Almhurst Dairy:

Name	Job	Union Scale	Alms. Rate
Lawrence Wall	Bottlewasher	36.40	$45.00
Arnold Thompson	Checker	39.00	55.00

[fol. 326] All other men $45.00 for 8 hours a day, 6 days a week.

PLAINTIFF'S EXHIBIT M; partial list of milk haulers to Denver, showing type of carrier, name of carrier, and District served and indicating membership or non-membership in union.

PLAINTIFF'S EXHIBIT O,

Agreement

This agreement made and entered into this — day of —, 1945, by and between —— ——, hereafter referred to as the Employer and the Milk Drivers and Dairy Employees Local Union No. 537 hereafter referred to as the Union.

The Employer agrees that all employees must become and remain members of the Union in continuous good standing as a condition of employment.

The Employer may hire non-Union men with the understanding that said new employees must make application for membership within 5 days from date of employment, and if found to be eligible by the employer and the Union must complete application and become a member within 15 days from date of employment.

It is further agreed that the Employer will immediately notify the Union Local No. 537 of all new employees employed.

—— ——, Union. —— ——, Employer.

[fol. 327] PLAINTIFF'S EXHIBIT P; Certificate by Daniel J. Tobin, General President of International Brotherhood, that A. E. O'Neil is a direct, salaried officer, organizer and representative of International Brotherhood; authorizing him to visit local unions, etc. "Wherever General Organizer O'Neil is directed to work, local unions and officers must extend to him all help and information desired by him, or that may be useful to him."

Dated at Indianapolis, Ind., July 1, 1945.

PLAINTIFF'S EXHIBIT Q:

The undersigned person representing the Beach Milk Company, located at 2201 Arapahoe, Denver, Colorado, agrees that he is familiar with the existing agreement in effect covering the Milk Distributors and the Milk Drivers and Dairy Employees Local Union No. 537.

And that he will put into effect at this plant, the hours, wages and all conditions of said Agreement immediately on signing of this letter and same shall remain in effect until December 31, 1945. And on or before December 31, 1945, he will in good faith meet with a Representative of the Milk Drivers Union No. 537 and negotiate an Agreement covering this plant.

Beach Milk Company, by —— ——.

O. K. as to form—N. H. C.

[fol. 328] PLAINTIFF'S EXHIBIT R; Articles of Incorporation, By-Laws and Membership Agreement of Denver Milk Producers, Inc.

PLAINTIFF'S EXHIBIT T; Letter of Denver Milk Producers, Inc. to Shippers:

There is some difficulty in the Denver milk market between the Teamsters Union and the milk haulers, causing some milk to be diverted out of union-operated plants into non-union plants.

Some of the milk wagon drivers have joined the union and others have refused. The Association has taken the position that it is not the business of the Association who joins the union, but if a driver does not want to join the union, we will not be a party to forcing him into it. If the union will not permit a non-union driver to deliver milk to a union-operated plant, we will divert the milk to a plant not operated by union help.

There is a place for all the milk that is shipped to Denver and no one need worry about their milk not being taken care of.

PLAINTIFF'S EXHIBIT U; Letter Denver Milk Producers, Inc. to Milk Shippers:

After 10 days interruption, the Teamsters union discontinued picketing the union plants in Denver and permitted non-union milk haulers to deliver milk to union plants and agreed to give a 48 hour notice before interfer- [fol. 329] ing again with the delivery of milk to union plants. They are, however, picketing some non-union plants trying to force them into the union.

The plants operated by union help in Denver are in no way responsible for all this trouble and disturbance and it is the desire of the Association that no shipper permanently remove his milk from a union operated plant over the difficulty we have just had.

Very truly yours, Denver Milk Producers, Inc. By (S.) W. C. Moore, manager.

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PLAINTIFF'S EXHIBIT V.

Minutes of Local No. 537, dated July 19, 1945.

Regular meeting called to order at 8:10.

Roll call of officers showed one absent.

Brother Coffey announced that we should get an answer on the Stearns case this weekend.

Royal Crest Drivers are now on Com. basis.

Loading and unloading at Meadow Gold to be straightened out by Saturday.

All drivers must keep within the hours or by-laws will be enforced.

Plans to organize Milk Haulers was discussed.

Possibilities of getting condenseries at Johnstown and [fol. 330] Ft. Lupton organized were also discussed.

Meeting adjourned at 9:20.

Respectfully submitted, Chas. Gilbert, Rec. Sec.

Minutes of August 16, 1945:

Regular meeting called to order at 8:10.

Roll call of officers showed one absent.

No minutes were read.

Brother Coffey announced that any member interested in Bowling should report to Recreation Bowling Alley.

Any member not getting their Advocate should leave name and address at office.

All members were asked to do all they could to stir up a little inteerst among unorganized portion of the Dairy industry.

Meeting adjourned at 9:00.

Respectfully submitted, Chas. Gilbert, Rec. Sec.

Minutes for September 20, 1945.

Regular meeting called to order at 8 o'clock.

Roll call of officers showed one absent.

No minutes were taken at last meeting so none were read.

Six new members were initiated.

Brother Coffey reported on picket line at Beach Creamery [fol. 331] and announced that no Beach milk will go into Piggly Wiggly stores.

Almhurst Dairy signed a Union contract and Drivers will go on Commission basis.

Stearns Dairy contract settled on flat salary of $210.00 per month. Drivers will get back pay.

Coffey reported on meeting with farmers of Boulder.

Report on meeting with the Major.

All members were told to carry their Union book at all times.

No further business. Meeting adjourned at 9:00 o'clock.

Respectively submitted, Chas. Gilbert, Rec. Sec.

PLAINTIFF'S EXHIBIT X. Application blanks International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 537, signed by Herbert Elton Douglas, August 6, 1945, Kenneth Duane Elliott, August 14, 1945, Alvin Paulson, August 18, 1945, William Thurman Bullard, August 30, 1945, Craig Eugene Bashford, August 21, 1945, John Tisone, August 30, 1945.

PLAINTIFF'S EXHIBIT Y. Copies of 33 applications of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union No. 537, bearing various dates in August and September, 1945, and signed by various [fol. 332] persons who were truck drivers, milk drivers, haulers, transfer drivers, driver-operators, etc.

PLAINTIFF'S EXHIBIT Z. Copies of 21 similar applications bearing various dates in August and September, 1945, and signed by various persons, being drivers, truck drivers, etc.

DEFENDANTS' EXHIBIT I.

Agreement Between Denver Milk Producers, Inc., and Distributors of Milk in the Denver, Colorado Market.

In consideration of the mutual covenants and conditions hereinafter set forth, to be faithfully kept and performed by the parties hereto, the parties agree as follows:

We, the following distributors of milk in the Denver, Colorado milk market agree to purchase and the Association agrees to permit its members to sell such milk as they may elect to sell to any dealers who are parties hereto under the following terms and conditions and in accordance with the directions for operating a market-wide pool which are attached hereto and made a part of this contract.

Classes of utilization prices shall be as follows:

Class I milk shall be all milk disposed of in the form [fol. 333] of fluid whole milk and all milk not accounted for as Class II milk and Class IV milk and shall be priced at eighty-three and six-tenths cents (83.6c) per pound butterfat.

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Class II shall be all milk used to produce cream sold or used as fluid cream and shall be priced at seventy-three and six-tenths cents (73.6c) per pound butterfat.

Class IV shall be all milk the butterfat from which is manufactured into dairy products and shall be priced at seventy and six-tenths (70-6c) per pound butterfat.

It is further agreed that the cost of moving milk from plants outside the City of Denver into the City plants shall be added to the total cost of the milk and that any of such costs up to and including two cents (2c) per pound butterfat will be taken from the blended price. Any costs of moving milk into the market above two cents (2c) per pound butterfat will be added to the total cost of milk to distributors.

It is further mutually agreed that from the net blended price due producers as the result of computations of the pounds of butterfat in each class at the prices herein specified, a sufficient sum of money is to be deducted by the Denver Milk Producers, Inc. to create a bonus fund of three cents (3c) per pound of butterfat for all butterfat [fol. 334] in the milk approved by the Denver Health Department for bonus payments. Each distributor is to be credited with paying such producers as meet the bonus requirements established by said Health Department, the three cent (3c) bonus based on production of each Producer and the Distributors hereby agree to make such bonus payments to such Producers as they are notified by the Denver Milk Producers, Inc. so to pay. Distributors further agree to pay bonuses only as specified herein except for milk sold for premium.

The Distributors hereby agree to pay to the Denver Milk Producers, Inc. out of the cost of their milk at the class prices herein specified, one cent (1c) per pound butterfat for operating and other purposes.

It is hereby mutually agreed that the Association shall have the right to verify all reports and payments of each handler by auditing of such handlers records and the records of any other handler or person upon whose disposition of milk such handler claims classification. Each handler hereby agrees to keep adequate records of receipts and utilization of milk and further agrees that during the usual hours of business make available to the Association or its representative such records and facilities as may be [fol. 335] necessary for auditing purposes.

It is hereby mutually agreed that distributors may continue to purchase milk from producers who are not members of the Denver Milk Producers, Inc. but will discontinue such purchases when and as determined by Association after thirty days notice from Association.

It is further mutually agreed that the Association has the right to withhold or have withheld fluid milk from the plant or plants of this Distributor and all Distributors bound by similar agreement violating the terms of this agreement and/or said similar agreements through his, its or their falsification of the records, reports or receipts of milk from or through the Association or sales thereof, or failure to pay promptly according to the terms of this agreement for the milk received.

This contract shall become effective May 1, 1943 and may be cancelled by the Denver Milk Producers, Inc. with any or all parties hereto, upon thirty days written notice and any distributor hereto signed may give notice to the Denver Milk Producers, Inc. of his withdrawal from this contract, such withdrawal to be effective thirty days from date of such notice.

In witness whereof, the parties have hereunto subscribed [fol. 336] or caused to be subscribed by proper officers thereunto duly authorized their respective names.

Denver Milk Producers, Inc. By —— ——, President.

Dated May 10, 1943.

Name	Representative	Date
.....	.....	.....

DEFENDANT'S EXHIBIT 2. Permission to Beach Milk Company dated March 21, 1945, no union involved, effective March 19, 1945, to establish wage rate schedule as follows:

Classification	Approved Hourly Rates Mimimum	Maximum
General Plant Labor	$. 60	$. 75
Includes: Relief Man		
Pasteurizer Operator		
Standardizer		
Checker		
Ice Cream Maker		
Mix Maker		
Butter Maker		
Weigher and Sampler		
Bottle Washer Operator		
Bottle Filler Operator		
General Utility		
Cream Sampler-Tester		
Foreman	.80	.95
Office Clerks	.50	.65
Retail Store Clerk	.50	.60
Custodian	.50	.65
Ice Cream Cabinet Repair man and Equipment Maintenance Man	.70	.85

(Here follows 1 photolithograph side folio 336a)

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To Prevent the Tragedy of No Milk in Denver— We Will Co-operate With Provisions of City's Excise Tax Ordinance

It Provides the Following Excise Taxes on Fluid Milk:

1 Quart, 2c Tax
½ Gallon, 4c Tax
1 Gallon, 8c Tax
½ Pint, ½c Tax

CREAM, ½ Pint, 2c Tax

Tax to Be Added to Prevailing Prices and Collected by Distributors

HAVING failed to obtain relief from O. P. A. "ceiling prices" sufficient to insure us against continued losses and with no other recourse available for the relief we *must* have, we have decided to accept the proposal of the City Ordinance, which assesses an excise tax at the rate of two cents per quart on all fluid milk sold in the Denver market, effective at the earliest possible legal date which is Wednesday, November 3rd . . . Today we will deliver milk on the old basis.

Confident of the legality of this emergency measure, our distributors, individually, have agreed to abide by its provisions and collect the tax for the city which will pass it on to us producers. . . . Thus, your milk supply will *not* be stopped—and our deliveries to distributors will continue as usual!

Special Excise Tax Is Legal, According to O. P. A. Ruling

Under O. P. A. Regulation—Part 1499—Commodities and Services (Amendment 7 to General Maximum Price Regulation), dated June 19, 1942, the following is stated:

> "As to a tax or increase in a tax which becomes effective after March 31, 1942. If the statute or ordinance imposing such tax or increase does not prohibit the seller from stating and collecting the tax or increase separately from the purchase price, and the seller does separately state it, the seller may collect, in addition to the maximum price, the amount of the tax or increase actually paid by him or an amount equal to the amount of tax paid by any prior vendor and separately stated and collected from the seller by the vendor from whom he purchased."

Which ruling, in our opinion, clearly establishes the legality of the proposed City Ordinance and the distributors' right to collect the excise tax.

Slight Price Increase Plus Subsidy NOT Sufficient

To inform the public fully and correctly on the true facts behind our decision to decline the latest offer of the O. P. A.:

Following our announced decision two weeks ago to divert our fluid milk to other markets because O. P. A. "ceiling prices" here prevented our getting anywhere near costs of production, the O. P. A. at Washington sent two investigators here who spent a day and a half analyzing our situation, returning there last Tuesday evening . . . We showed them with facts and figures how absolutely necessary it was that we get, either thru increased subsidy or higher "ceiling price," a basis of two cents a quart more for our fluid milk . . . This was *not* a figure arbitrarily arrived at nor one submitted for compromise purposes! . . . Last Friday night—three days later—an increase of one-half cent a quart on the Denver retail "ceiling price" was authorized by O. P. A. on the contention that this amount plus the 35-cent-per-hundredweight subsidy already granted was sufficient to satisfy our needs . . . It is *not!* . . . It does *not* clear us on today's high production costs—feed and labor on which there is no "ceiling"—and we cannot accept it! . . . Therefore, we *must* take advantage of the opportunity for relief afforded by the ordinance.

Manufacturers Blameless

Because of unwarranted blame that has been visited upon milk products manufacturers of this area, to whom we planned to divert the fluid milk from the Denver area, we want the public to understand clearly their innocent position in our quest for a higher price.

These manufacturers are engaged in production of food vital to the war effort—and actually need much more milk than the rapidly increasing demands of this market have allowed them . . . They have always co-operated fully with us—taking our over-supply to prevent waste and sacrificing their own needs when shortages due to drouth or other reasons and demands of the local market required . . . Thru this co-operation Denver has always had sufficient milk to take care of its needs, and valuable perishable food has not been lost. . . . The prices paid us by manufacturers are not restricted by O. P. A.—therefore they can pay us more for our milk.

In desperation, because milk is perishable and *must* be moved every day, we went to them and asked them to accept Denver's normal supply . . . Because they needed it for important foodstuff production, they agreed to accept it and thus help us as well as themselves . . . Certainly, under these circumstances, they are entirely blameless and should not be criticized for their co-operation.

Getting more explicit as to reasons for our refusal to accept the latest O. P. A. offer, here are the facts about it: It adds up to an amount of 90 cents per pound of butterfat on *80 percent of our milk*—that used for fluid milk purposes only . . . Which makes the average we producers will get only 83½ cents—plus the regular bonus for quality milk which amounts to three cents per pound of butterfat for such producers as qualify . . . This added to our subsidy will make a blended price of 93½ cents—and *that is not enough!* . . . In contrast, Cheyenne was given $1.00 per pound of butterfat *plus* the subsidy—which means a total of $1.10 . . . As the result, Cheyenne is now taking fluid milk which is badly needed in the Denver market . . . So we need a higher "ceiling price" or increased subsidy not only to save ourselves from financial ruin, but also to protect Denver's milk supply . . . In accepting the relief of the City Excise Tax, we are not expecting any government subsidy, which, in our opinion, is a tax on future generations including members of our armed forces on their return to civilian life . . . We believe that War Bond purchases should go to win the war and *not pay grocery bills!*

NOT a "Strike"!

Our plan to divert Denver's supply of fluid milk to manufacturers is *not* and *never has been a "strike," in any sense of the word!* . . . In a strike production is stopped—and the output is lost forever. . . . At no time did we even consider stopping production . . . It was our plan to sell our milk to those, who, not governed by O. P. A. restrictions, could pay us a higher price and at the same time produce foodstuffs vital to the war effort. . . . Every gallon of our milk under this diversion would still go into some form to help win the war.

We are all patriotic Americans, *more than anxious* to keep you, our customers, supplied with milk. . . . Unfortunately, we have been caught in the squeeze between frozen "ceiling prices" for our product and steadily mounting feed and labor costs on which there is no "ceiling." . . . We were going broke or out of the dairy business because of a very inconsistent situation—and we *had* to fight!

We are sorry that we have been forced to resort to such extreme measures to gain a price for our milk that will allow us to remain in business and keep you supplied with "nature's most nearly complete food." . . . But—what would YOU have done had YOU been in our position?

DENVER MILK PRODUCERS, Inc.

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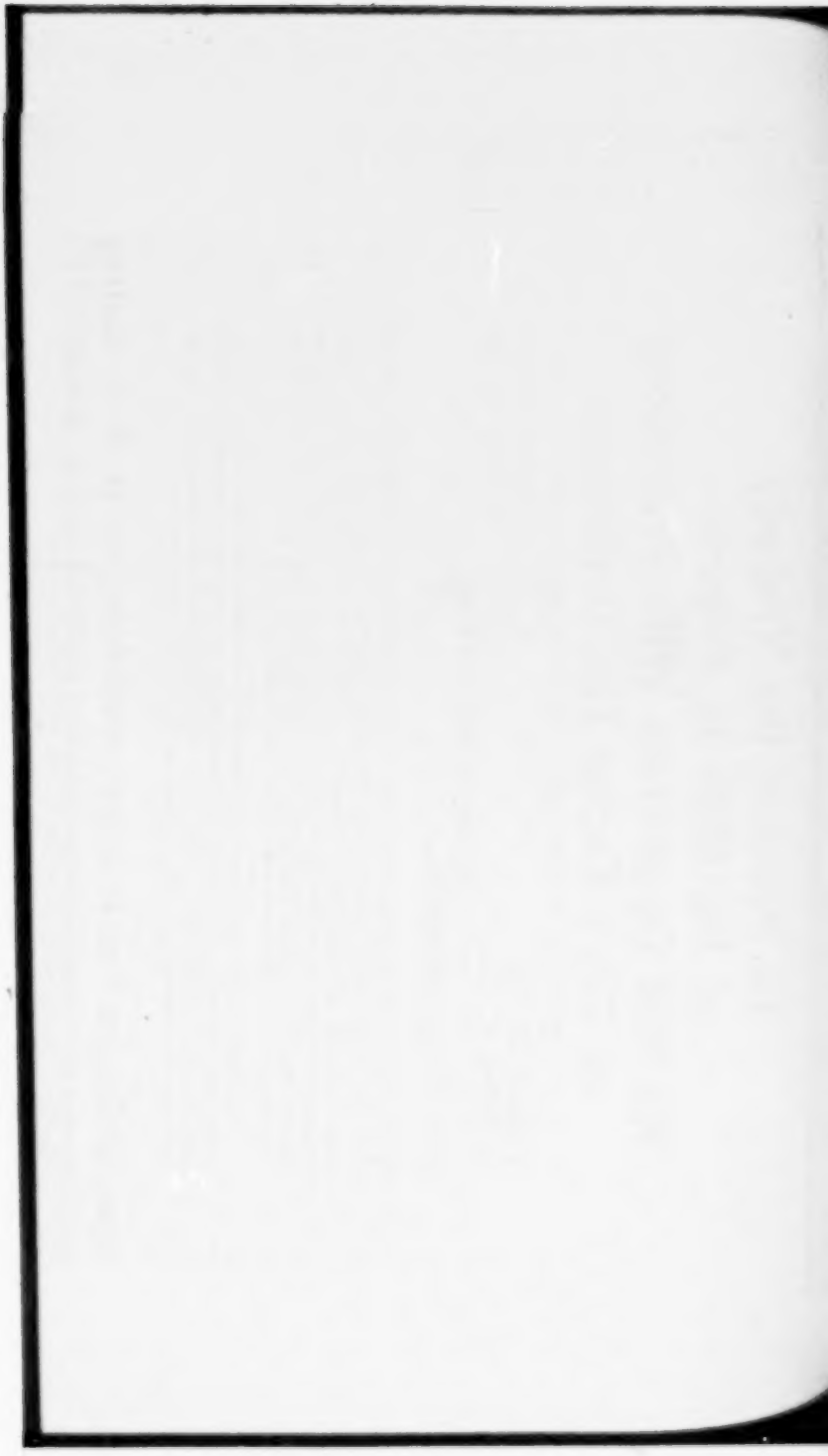

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[fol. 337] DEFENDANT'S EXHIBIT 3. Photostat copy of advertisement in Rocky Mountain News of Denver Milk Producers, Inc. under date of November 2, 1943.

DEFENDANT'S EXHIBIT 4. Letter to Howard Coffey, Business Agent, International Brotherhood of Teamsters, Local No. 537, from War Labor Board, Disputes Division, setting forth instructions to Regional Board in regard to labor disputes and arbitration.

Certificates to transcript of testimony.

STAY OF EXECUTION for 30 days, entered March 9, 1946.

ORDER TO CORRECT RECORD

Order to correct record dated March 18, 1946, so as to show that all of the causes were consolidated for hearing upon application of the plaintiff for temporary injunction and were so heard, and that as part of final order and judgment of the court in each and all of the causes and it was and is ordered that the temporary restraining order heretofore issued be dissolved except so far as the same may be preserved by stay of execution and by further order of the court, and that plaintiff's application for temporary injunction be denied and motion for new trial be dispensed with.

ORDER CONTINUING TEMPORARY RESTRAINING ORDER

Order continuing temporary restraining order in full force and effect for period of thirty days from March 9, 1946, pending application of the plaintiff for supersedeas, and for further continuation of restraining order, and con-
[fol. 338] tinuing beyond restraining order.

STAY OF EXECUTION

April 8, 1946, Stay of Execution, together with temporary restraining order and bond in connection therewith extended for an additional period of 45 days from the date of the order pending application for supersedeas.

STAY OF EXECUTION

May 17, 1946, Order of additional 45 days Stay of Execution and 45 days for reporter's transcript, and that all

temporary restraining orders remain in effect for 45 days in addition to the time heretofore allowed.

Complaint

Harold Hennigh, E. W. Johnson, O. T. Holland and Elton Buster on September 12, 1946, filed their complaint for damages and injunction against the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, et al. Complaint alleges (Paragraph 1) that plaintiffs join in this action in claiming relief against the defendants and that their claims arise out of a series of transactions and occurrences in which there are common questions of law and fact. (Paragraph 2) That the persons constituting the membership of Local No. 537 and the union employees of union dairies are so numerous as to make it impracticable to bring all before the court and hence defendants are sued as representatives of all members of said Union and all employees of all Union Dairies, etc. (Para- [fol. 339] graph 3) That plaintiffs are farmers and cattlemen and are residents of the County of Boulder, and own, operate and manage individual farms and herds of registered Guernsey dairy cattle, and (Paragraph 4) participate in a national milk marketing program known as the "Golden Guernsey Program" for a superior grade of fluid milk yielding a premium price, and which are marketed separate from other milk products, and (Paragraph 5) plaintiffs have invested large sums of money in building registered herds and have undertaken obligations and made commitments so they could participate in said program. (Paragraph 6) Plaintiffs have entered into a contract with Denver Milk Producers, Inc., copy of which is attached to complaint as Exhibit A. The plaintiffs have been permitted by Denver Milk Producers, Inc., for several years and are now permitted to ship their milk to the Carlson-Frink plant at Denver, which is the only plant in Denver which participates in said "Golden Guernsey Program" and pays a premium of 4½ cents per pound butterfat to golden Guernsey producers. (Paragraph 7) That plaintiffs' fluid milk is transported to Denver daily by Austin Bros. Truck Lines, which operates as a common carrier under Colorado P. U. C. regulations. (Paragraph 8) That Austin Brothers Truck Lines employ ten drivers, none of whom are members of any of defendant unions; that said drivers refuse to become mem-

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[fol. 340] bers of any of defendant unions. (Paragraph 9) That the status of the defendants is as follows; which is identical with Paragraph 9 of the Complaint of Denver Milk Producers, Inc. set forth in Folios 10 to 12.

(Paragraph 10) Allegations are identical with paragraph 16 of complaint of Denver Milk Producers, shown at Folio 19 to 24.

(Paragraph 11) identical with paragraph 17 of Complaint of Denver Milk Producers, Inc., shown at Folio 24.

Paragraph 12:

That in furtherance of said unlawful combination, confederation and agreement and to effectuate the same against the plaintiffs, the defendants and each of them, acting by and through their representatives and themselves have performed the following acts:

(a) Employed and trained large groups of big, brawny men of apparent great physical prowess as pickets to carry out any and all orders of the officers of the defendants;

(b) Caused said pickets to follow the non-union drivers of Austin Bros. Truck Lines while on their routes collecting and delivering plaintiffs' milk;

(c) Caused said pickets to intercept and stop drivers for Austin Bros. Truck Lines before they enter the grounds of [fol. 341] cr at the Carlson-Frink plant in Denver, and said pickets refused to allow plaintiffs' milk to be there unloaded;

(d) Ordered and caused all employees of the Carlson-Frink Company plant in Denver to refuse to receive, process and deliver any of plaintiffs' milk transported to Denver by Austin Bros. Truck Lines;

(e) Intimidated the truck drivers for Austin Bros. Truck Lines from collecting milk from the plaintiffs and delivering said milk at the Carlson-Frink Company plant in Denver and accomplished the same by brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, fraud and false representations;

(f) Intimidated and coerced the plaintiffs from shipping their milk to Denver by Austin Bros. Truck Lines and demand that they change to union carriers.

(g) Employed secondary boycotts against the plaintiffs in connection with said plan.

(Paragraph 13) That by reason of said conspiracy and actions of defendants, plaintiffs have been unable to deliver milk to Carlson-Frink Dairy in Denver, and Denver Milk Producers, Inc. as plaintiffs' agent has been forced for some time to deliver milk to other plaintiffs in Denver, which are not members of the "Golden Guernsey Program," that [fol. 342] by reason of said unlawful interference with the orderly marketing of plaintiffs' milk, plaintiffs have been deprived of 4½ cents per pound butterfat; that said diversion is now rapidly being stopped.

(Paragraph 14):

That defendants, their officers, agents, members and employees have been and now are hindering, preventing and obstructing the employees of Austin Bros. Truck Lines from delivering plaintiffs' milk to any processing and pasteurizing plant in Denver, all to the great detriment, disadvantage and injury of the plaintiffs.

(Paragraph 15):

That if defendants continue to succeed in their agreement and conspiracy to prevent deliveries of plaintiffs' milk by Austin Bros. Truck Lines to dairies in Denver, then all such undelivered milk will spoil and have to be dumped to the complete loss thereof to the plaintiffs.

(Paragraph 16):

That said acts of the defendants and each of them have been undertaken and performed without regard to the rights, privileges and desires of the plaintiffs.

(Paragraph 17):

That no labor dispute exists between plaintiffs and defendants or between Austin Bros. Truck Lines and their employees. That plaintiffs are Farmer-Producers and do [fol. 343] not stand in the relation of employer and employee with the Austin Bros. Truck Lines nor any of these defendants or any dairies.

(Paragraph 18) recites certain provisions of Colorado Labor Peace Act.

(Paragraph 19) That Defendants conspiracy and acts are illegal and in violation of Article II, Section 3 of the

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Colorado Constitution, the Statutes of the State, and the Rules and Regulations of the Public Utility Commission of Colorado.

(Paragraph 20):

That if said plan is permitted to continue, plaintiffs will sustain great and irreparable injury to their milk marketing program, will be unable to continue their participation in the "Golden Guernsey Program," and will be unable to carry out their commitments and obligations thereto; that large sums of money invested by plaintiffs in said "Golden Guernsey Program" will be forever lost to them; that a continuation of said plan will result in a total destruction of their milk producing business.

(Paragraph 21):

That there is no plain, speedy or adequate remedy at law, and the continued conduct of defendants would require a multiplicity of suits, and if not restrained by this Court will result in irreparable damage to the plaintiffs.

[fol. 344] Wherefore, Plaintiffs pray that a temporary injunction issue and upon a hearing be made permanent, and defendants and each of them be restrained from:

1. In any manner interfering with the delivery of plaintiffs' milk to the Austin Bros. Truck Lines, and with the transportation thereof by Austin Bros. Truck Lines to the dairies in Denver.

2. From refusing to handle and process said milk of the plaintiffs.

3. From in any manner compelling or coercing the plaintiffs to enjoin or enter into such activities of the defendants.

4. From in any manner causing the destruction or deterioration of plaintiffs' milk so as to render it unfit for human consumption.

Also for damages against the defendants and each of them:

1. In such sum as will fully compensate plaintiffs for all spoilation of plaintiffs' milk heretofore;

2. In the amounts lost by plaintiffs for premium by reason of said diversion;

3. For such other, further and different relief as to the court may seem meet and proper.

Exhibit A of the complaint is the same as Exhibit A of the complaint of Denver Milk Producers Association, shown at Folio 41.

[fol. 345] Return of summons showing service upon all defendants.

AMENDMENT TO COMPLAINT

Amendment to the complaint, being Paragraph IIX thereof, which is the same as Amendment to Complaint of Denver Milk Producers, Inc., shown at Folio 16.

JUDGMENT

Judgment in Cause No. 45091, showing defendant's written motion to dismiss was granted, dissolving temporary injunction and dismissing said cause, and that defendants recover their costs.

COMPLAINT

Complaint filed September 12, 1945 by Carl A. Borgmann and Walter H. Borgmann d.b.a. Borgmann Bros., L. C. Austin and F. S. Austin, d. b. a. Austin Bros., plaintiffs vs. defendants, The International Brotherhood, et al.

(Paragraph 1) alleges that plaintiffs join in their claims arising out of a series of transactions and occurrences in which there are common questions of fact.

(Paragraph 2):

That Carl A. Borgmann and Walter H. Borgmann do business as Borgmann Bros., and are Common Carriers operating under the Public Utility Commission of Colorado, and duly licensed as such. That they operate as such in the collection and delivery of milk and other products and hold a license as such Carrier in an area in the vicinity of Long-
[fol. 346] mont. That in most of said area they are the exclusive Carrier from the Farmer-Producers therein. That they operate two trucks and are the Carriers for about 37 Farmers-Producers to the amount of about 130 cans or 1300 gallons of milk per day. That one of said partners drives one truck and they employ one driver.

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(Paragraph 3):

That L. C. Austin and F. S. Austin do business as Austin Bros., are Common Carriers operating under the Public Utility Commission of Colorado, and duly licensed as such. That they operate as such in the collection and delivery of milk and other products, and hold a license as such Carrier in an area from Golden North along the foothills to the Larimer County line, East to the west County line, South to Broomfield, East to Federal Boulevard, South to Denver, and West to Golden; That in a large portion of said area, except in the vicinity of Broomfield and Lafayette, they are the exclusive Carrier for the Farmer-Producers therein. That they operate eight trucks and are the Carriers for about 175 Farmer-Producers to the amount of about 700 cans or 7,000 gallons of milk per day. That they employ ten drivers.

(Paragraph 4) That Walter H. Borgmann is also a Farmer-Producer, maintains a herd of 20 to 25 cows, and [fol. 347] until September 8, 1945, hauled and delivered his own milk to a Non-Union Dairy.

(Paragraph 5) Allegations of impracticability of bringing all members before the Court and suing the defendants in their representative capacities.

(Paragraph 6) Allegations of status of defendants, identical with Paragraph 9 of Milk Producers Association, shown at Paragraph 10, et seq.

(Paragraph 7) Allegation of conspiracy and agreement of defendants identical with Paragraph 16 of Denver Milk Producers Association, shown at Folios 19 to 24.

(Paragraph 8) Same as Paragraph 17 of complaint.

(Paragraph 9) Same as Paragraph 18 of complaint of Denver Milk Producers Association shown at Folios 25 and 26.

(Paragraph 10):

That until September 2, 1945, none of the employees of any of the plaintiffs belonged to Union No. 537. That no employees of the plaintiffs have joined the Union, that all of them have refused to join, do not desire so to do, and will not join unless coerced to join, and many of them state that they will refuse so to do and will quit their jobs. That no labor dispute exists between Plaintiffs and their employees, or between Plaintiffs and any Dairies. That none

of the Plaintiffs have in any manner prevented their employees from joining said Union.

[fol. 348] (Paragraph 11):

That as Common Carriers the plaintiffs are required to accept all milk offered to them within their territories and deliver the same to the Dairies designated by the Farmer-Producers or Denver Milk Producers, Inc. the co-operative marketing association of the Farmer-Producers.

(Paragraph 12):

That Plaintiffs allege on information and belief that under the rules and regulations of the Defendant Unions that Common Carriers are ineligible for membership in said Union because they do not occupy the status of employees with respect to employer.

(Paragraph 13):

That Plaintiffs Borgmann Bros. by their contracts with the Farmer-Producers who ship with them as a Carrier are required to deliver their milk to these Union Dairies: Beatrice, Carlson-Frink and Supreme and Non-Union Dairies Broadway and Royal Crest.

(Paragraph 15):

That Plaintiffs Austin Bros., by their contracts with the Farmer-Producers who ship with them as a Carrier are required to deliver their milk to these Union Dairies: Arvada Dairy, Beatrice, Brookridge, Carlson-Frink Co., [fol. 349] Stearns Dairy, and the following Non-Union Dairies: Almhurst, Beach Milk Co., Berkeley Garden Dairy, Mountain View Creamery, New Reliable Dairy, Rose Dairy, Royal Crest Dairy, Silver State, South Gaylord Creamery and Wheatridge Creamery.

(Paragraph 16):

That as the result of said illegal agreement and plan of Defendants the Plaintiffs who operate their own trucks or have Non-Union drivers cannot deliver their own milk or the milk of Farmer-Producers to Union Dairies; Pickets of the Defendants have stopped delivery by the Plaintiffs at many of the Non-Union Dairies and it is their intention

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completely to stop, interfer- with and prevent such delivery to Non-Union Dairies. That Plaintiffs by said actions, are and will be prevented from obeying the statutes of Colorado and the laws and regulations of the State of Colorado, which require them to deliver the consigned milk to the consignee designated by the Farmer-Producers or their designated cooperative marketing association, Denver Milk Producers, Inc. That as a result thereof they face damage suits from the Farmer-Producers.

(Paragraph 17):

That Defendants have coerced and required customers of Austin Bros. to cease doing business with them and to [fol. 350] employ carriers who are members of the Union, all to their loss and damage.

(Paragraph 18):

That the Plaintiffs and each of them have taken and will take no steps to force their employees to join Local No. 537, nor to forbid them to join the same; their sole interest is to retain their shippers, collect and deliver the milk to the designated dairies, and obey the laws of Colorado and the rules and regulations of the Public Utility Commission of Colorado.

(Paragraph 19) Alleges certain provisions of the Colorado Labor Peace Act of Colorado and (Paragraph 20) that the plan, conspiracy and acts done and intended to be done by defendants are illegal and in violation of Article II, Section 3, Constitution of Colorado, the Statutes of Colorado and the Rules and Regulations of P. U. C. of Colorado.

(Paragraph 21):

That if the Defendants succeed in their agreement and conspiracy to prevent deliveries of all milk by non-union drivers, then all of such undelivered milk will spoil or have to be dumped, to the complete loss thereof to the Farmer-Producers and the damages of these plaintiffs on future business with said Farmer-Producers.

(Paragraph 22):

That the action of the defendants has created an emergency and critical condition in Denver and its Milk-Shed;

[fol. 351] That the production, delivery from Farmer-Producer by Carrier to the Dairies, processing, bottling and delivery of the same to the consumer is charged with a public interest, and the lives, health and safety of the entire community is affected and imperiled by the same; that any stoppage of the supply of milk will be critical to the people of Denver and vicinity and will impose a hardship and inflict a calamity upon the general public by producing an artificial, illegal and unnecessary milk shortage in Denver; unless restrained and prevented by this Court.

(Paragraph 23):

That as a result of said illegal plan, conspiracy and agreement the amount of milk delivered to the ultimate consumer in Denver has been greatly curtailed, much milk has been spoiled and great damage has been inflicted upon all parties against whom the Union is operating. That if said plan continues the spoilation and loss will be far greater and cannot be estimated at this time. That many Farmer-Producers threaten to sell and dispose of their dairy herds or divert their milk to other areas if said conspiracy continues.

(Paragraph 24):

That there is no plan, speedy or adequate remedy at law, and the continued conduct of Defendants would require a [fol. 352] multiplicity of suits, and if not restrained by this Court will result in irreparable damage to these Plaintiffs, Farmer-Producers, Carriers, Drivers, Dairies and the public in general.

Wherefore, Plaintiffs pray that the Defendants and each them be enjoined:

1. From in any manner interfering with the delivery of milk by the Farmer-Producers to the Carriers, and by the Carriers and their drivers to the Denver Dairies.

2. From in any manner compelling any Carrier or his employees to join or enter into such activities of the Defendants.

3. From in any manner causing the destruction of milk or its deterioration so as to render the same unfit for human consumption in Denver.

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Also for damages against the Defendants and each of them to other Carriers.

1. For the business lost by Plaintiffs and each of them to other Carriers.
2. For such other relief as may seem meet and proper to the Court.

Return of Summons showing Service on all defendants.

AMENDMENT TO COMPLAINT

Amendment to complaint, filed September 25, 1945, which is identical with amendment to complaint of Denver Milk Producers, Inc., shown at Folio 16.

[fol. 353] JUDGMENT

Judgment in Cause A-45106, dissolving temporary injunction and for dismissal and recovery of costs by defendants.

COMPLAINT

Complaint filed September 12, 1945, Cause No. A-45112, Div. 2, by Joseph Green, Plaintiff, vs. International Brotherhood, et al., alleges; (Paragraph 1):

That plaintiff is a farmer, and the owner and operator of a herd of thirty milk cattle, and a producer of milk therefrom. That he owns and operates the farm on which said herd is stabled, which farm is near Brighton, Adams County, Colorado. That he markets daily about eight cans of milk containing 80 gallons. That his regular Common Carrier is Borgmann Bros., a duly licensed Public Utility Commission Carrier in his area.

(Paragraph 2)

That plaintiff is one of 1200 farmers who are members of the Denver Milk Producers, Inc., a Cooperative Marketing Association organized under the laws of Colorado, and as such member was directed by it to market his milk at the Carlson-Frink Company dairy in Denver, Colorado. That he has had the same delivered thereat by said carrier for a long time prior to September 10, 1945, without molestation or interference.

[fol. 354] (Paragraph 3):

That the Articles of Incorporation of said Marketing Association provide *inter alia*, as follows:

Any person, firm, partnership, corporation, or association, including both landlords and tenants in share tenancies, who is a bona fide producer handling dairy products, in the territory in which the Association is engaged in business, and who agrees to be a patron of the Association by entering into a marketing agreement in the form prescribed by the Board of Directors. A certificate of membership, in the form prescribed by the directors, shall be issued to each member.

(Paragraph 6) Allegation of impracticability of b-inging all members of union before the Court and of suing defendants in their representative capacities.

(Paragraph 7) Allegations of status of defendants, identical with Paragraph 9 of Complaint of Denver Milk Producers Association, shown at Folios 10 to 12.

(Paragraph 8) Identical with Paragraph 16 of Complaint of Denver Milk Producers, Inc., shown at Folios 19 to 23.

(Paragraph 9) Same as Paragraph 17 of Complaint of Denver Milk Producers, Inc., shown at Folio 24.

(Paragraph 10) Same as Paragraph 18 of Complaint of Denver Milk Producers, Inc., shown at Folios 25 and 26; [fol. 355] that defendants have caused great financial loss to plaintiffs, Farmer-Producers, Carriers and Dairies.

(Paragraph 11) Alleges duties of carriers.

(Paragraph 12) That some of said Carriers have joined Union No. 537, that others have refused so to do; that some of the drivers of said Carriers are farmers handling their own milk and that of other producers, and other drivers are employees of the carriers; that many of the drivers of the Carriers have joined Union No. 537, some voluntarily, some by misrepresentation and fraud that all other drivers of their carriers had joined the union, and they would be the only driver of their Carrier refusing so to do, when this was not true; that many of such drivers would not have joined except for such statement; that others have refused to join the union and will continue such refusal, and will quit their job if forced so to do; that the drivers in the main, live in towns outside of Denver, pick up the milk in their home districts early in the morning, deliver

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it to Denver, and return home to other employment in the afternoon, and that these drivers must live near their pick-up area for convenience in their work, and that union drivers cannot be obtained in many of such towns.

[fol. 356] (Paragraph 13):

That Borgmann Bros. have two trucks, one driven by one brother and the other by an employee; that none of said persons belong to a Labor Union and do not desire so to do. That Borgmann Bros. have done nothing and will do nothing to prevent their driver from joining a Union if he so desires, but will not require him to join one.

(Paragraph 14):

That no labor dispute exists between Plaintiff and Defendants, or between Plaintiff and any Carrier or Dairy; that Plaintiff is an employer, not an employee, and not eligible to join a Union.

(Paragraph 15):

That on or about September 8, 1945, the milk of Plaintiff was carried by said Borgman Bros. as Carrier for and on account of Plaintiff, with instructions to deliver the same to said Carlson-Frink Dairy in Denver. That said Carrier was prevented from so doing by said defendants under the conspiracy hereinbefore alleged.

(Paragraph 16):

That on September 10, 1945, Plaintiff personally accompanied the truck of said Carrier with his usual milk thereon to said Carlson-Frink Dairy, was stopped by said pickets of said Defendants, stated that he was a farmer dairyman [fol. 357] and had his own milk, and was told by said pickets that he could not unload the same and that if he did that the same would not be handled by the employees of Carlson-Frink. That said pickets prevented him from unloading the same.

(Paragraph 17):

That if said conspiracy of said Defendants remains in force and is fully carried out this Plaintiff will be unable, personally to deliver any of his own milk to any dairy in

Denver, which has the only market for his milk, and will be unable to have the same delivered by the Carrier of his choice, Borgmann Bros., and Plaintiff will be obliged to go out of business at a great loss to himself.

(Paragraph 18) Alleges provisions of statutes of the State of Colorado regarding labor activities. Alleges violation of Article II of Section 3 of Constitution of Colorado, Statutes of Colorado and P. U. C. Rules by defendants.

(Paragraph 20):

That the action of the Defendants has created an emergency and critical condition in Denver and its Milk-Shed; that the production, delivery from Farmer-Producer by Carrier to the Dairies, processing, bottling and delivery of the same to the consumer is charged with a public interest, and the lives, health and safety of the entire community [fol. 358] is affected and imperiled by the same; that any stoppage of the supply of milk will be critical to the people of Denver and vicinity and will impose a hardship and inflict a calamity upon the general public by producing an artificial, illegal and unnecessary milk shortage in Denver; unless restrained and prevented by this Court.

(Paragraph 21) Alleges that there is no plain, speedy or adequate remedy at law and that a multiplicity of suits would be required and that irreparable damage will result to plaintiff and others if defendants are not restrained. Plaintiff prays that the Defendants and each of them be enjoined from in any manner interfering with the delivery of the milk of Plaintiff, either personally or by the Carrier of his choice or that of the Denver Milk Producers, Inc., and from interfering with the processing, sale and delivery of the same by Carlson-Frink Dairy, or such other Dairy as Plaintiff may select; from in any manner attempting to compel or coerce this Plaintiff to join Local No. 537; from in any manner causing the destruction of milk or its deterioration so as to render the same unfit for human consumption in Denver. Exhibit A is the same as Exhibit A shown at Folio 41.

Return of Summons showing service of summons on all defendants.

Amendment to Complaint

September 25, 1945, Amendment to Complaint filed in [fol. 359] Cause No. A-45112, Div. 2, identical with Complaint in Denver Milk Producers, Inc., shown at Folio 16.

Judgment

Judgment in Cause No. A-45112, dissolving temporary injunction, and that cause be dismissed and that defendants recover their costs.

Complaint

Complaint for injunction and damages filed September 21, 1945, by Flora A. Beach, personally, and as Executrix of the Estate of Fred W. Beach, d.b.a. Beach Milk Co., a copartnership, Plaintiffs, vs. Milk Drivers' and Dairy Employees' Local Union No. 537; Teamsters Joint Council No. 54, American Federation of Labor of Denver, Colorado; Retail Clerks Union No. 7, American Federation of Labor; the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, American Federation of Labor; Bricklayers Union No. 1, American Federation of Labor; H. E. O'Neal, as an Organizer of the said International, and personally; Howard Coffey, as an officer of Local No. 537 and of the Council, and personally; and Earl Christol, as an officer of Local No. 537, and personally, Defendants.

Complaint alleges (Paragraph 1) Copartnership, Appointment of Executrix of Fred W. Beach, ownership of beneficial interest of Flora A. Beach.

(Paragraph 2) Authority to institute the action by the Executrix.

[fol. 360] (Paragraph 3):

That said Milk Company operates a dairy at 2201 Arapahoe Street, Denver, Colorado, and has operated the same for many years. That it is not engaged in interstate commerce.

(Paragraph 4):

That plaintiffs are neither for nor against labor unions; that plaintiffs have no knowledge as to whether any of their employees belong to any union, except that some have

stated they do not do so, and plaintiffs have done nothing at any time to require their employees to join or to refuse to join any union, and that said employees are free to do as they please about joining or refusing to join a union at any time.

(Paragraph 6) Alleges status of defendants as alleged in Paragraph 9 of Denver Milk Producers Complaint, shown at Folios 10 to 12, except no allegation with respect to Tobin or Beck, nor with respect to Parker, Cerva, Oetzel and employees of Beatrice Creamery Company, nor as to Davis, Peterson, and Gillis, as employees of Carlson-Frink Company; further that Retail Clerks' Union No. 7 is a local union of American Federation of Labor, with its membership confined to employees of retail stores in Denver and with offices in Denver.

That Bricklayers Union No. 1, American Federation [fol. 361] of Labor is a local union, with its membership in Denver, and with offices in Denver.

(Paragraph 7):

That Denver Milk Producers, Inc., is a producers' co-operative marketing association organized under the laws of Colorado, composed of some 1,200 farmers in the area supplying Denver with milk, such area being known as the Denver Milk-shed. That on information and belief plaintiffs allege that all of their Farmer-Producers belong to said association. That the milk from the Farmers-Producers is hauled to this Company either by common or private carriers licensed by and operating under the Public Utilities Commission of Colorado and under the laws of Colorado, all of whom are required by law to deliver such milk to the consignees specified by the shippers, whether union or non-union dairies. That many of said Carriers operate in territory assigned to them by said Commission as exclusive Carriers therein, and when so assigned such Carriers are the only truckers empowered by law and licensed to haul said milk to this Company and other dairies in the milk-shed. That in portions of the milk-shed the areas of some Carriers overlap, and in such small areas only do the Farmer-Producers have the opportunity to select which of the rival Carriers will haul their milk. That in such areas [fol. 362] the Carriers are selected either by the Denver Milk Producers, Inc., or by the Farmer Producers. That

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this company has no choice and nothing to do with the selection of said Carriers.

(Paragraph 8) Alleges duties of Carriers and illegality of interference therewith.

(Paragraph 9):

That each of said Carriers operate as independent contractors with the Farmer-Producers and not as employees thereof, with the entire responsibility of the safety, route and manner of such transportation, and have never at any time had any contractual relations or any relationship as of employer or employee with this Company.

(Paragraph 10):

That some of said Carriers have joined Union No. 537, that others have refused so to do; that some of the drivers of said Carriers are farmers handling their own milk and that of other producers, and other drivers are employees of the Carriers; that many of the drivers of the Carriers have joined Union No. 537, some voluntarily, some by misrepresentation and fraud that all other drivers of their carriers had joined the union, and they would be the only driver of their Carrier refusing so to do, when this was not true; that many of such drivers would not have joined except for such statement; that others have refused to join the [fol. 363] union and will continue such refusal, and will quit their job if forced so to do; that the drivers in the main, live in towns outside of Denver, pick up the milk in their home districts early in the morning, deliver it to Denver, and return home to other employment in the afternoon, and that these drivers must live near their pick-up area for convenience in their work, and that union drivers cannot be obtained in many of such towns.

(Paragraph 11):

That said Company sells a high standard grade of milk from selected herds; that the Company personally inspects the herds and plant of each farmer or cattleman, hereinafter called Farmer-Producers, before accepting shipments of milk from them; that in addition each such herd is inspected by the Army and the Colorado and Denver Boards of Health; that after acceptance of said Farmer-Producers' initial deliveries, periodic inspections are made by the

Company, and any Farmer-Producers who do not maintain the standards required by the Company are no longer allowed to ship milk to the Company, which removes them from the list of its shippers for such reason.

(Paragraph 12):

That the operations of the Company require the installation of new and additional machinery and the erection of a [fol. 364] boiler house for the same; that the materials were purchased therefor and delivered on the Company's lots adjacent to its dairy, a building permit obtained and work started about August 15, 1945. That the same is urgently needed by the Company, and any stoppage of work thereon will result in damages to the Company. That Union bricklayers were employed thereon.

(Paragraph 13):

That the Company sells a large portion of its milk to the Piggly Wiggly Stores of Denver. That it alleges on information and belief that said stores are individually owned, but that they have cooperative advertising, purchasing, supplying and other joint business arrangements. That there are about twenty-eight of said stores in Denver, Arvada and Aurora, and they buy all or most of their milk from this Company. That about nine of said stores are so-called Union stores, and plaintiffs allege on information and belief that their eligible employees belong to defendant Union No. 7.

That any impairment of the sale and delivery of its processed milk by the Company to said Piggly Wiggly Stores would cause great financial loss to the Company and inflict irreparable damages upon it, and may result in the entire loss of said business by the Company to all of said stores.

[fol. 365] (Paragraph 14):

That on or about July 31, 1945 all of the defendants except the Retail Clerks Union and the Bricklayers Union entered into a conspiracy and agreement to prevent the delivery of milk to this Company and other non-union dairies, and to prevent the processing, sale and delivery of said milk by this Company and other dairies to their cus-

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tomers in Denver and in the Denver milk-shed, unless and until this Company, the Carriers, Farmer-Producers and other dairies joined Local No. 537. That in pursuance of said plan they agreed among other things, to do and perform the following acts:

(a) To employ and train groups of Union men as pickets to carry out any — all orders of the officers of the defendant Teamsters' and Drivers' Unions;

(b) To cause said pickets to follow non-union drivers of the Carriers while on their routes collecting milk;

(c) To prevent individual Farmer-Producers from hauling and delivering any of their own milk products to any dairy in the milk-shed unless such farmer is a member of Local No. 537;

(d) To prevent any Carrier from employing non-union drivers to work in the milk-shed, and in Denver, and to prevent any such driver from handling any milk therein;

[fol. 366] (e) To cause said pickets to intercept and stop all non-union drivers before they enter the grounds of or at the unloading docks of all dairies, whether union or non-union;

(f) To order, instruct and stop all union drivers from delivering any milk to non-union dairies;

(g) To intimidate all non-union Carriers and their non-union drivers from collecting milk from Farmer-Producers and unloading their milk at all dairies, and to accomplish the same by brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, fraud and false representations;

(h) To intimidate and coerce all Farmers-Producers and dairies which own herds from shipping their milk by non-union Carriers and to require them to change to union Carriers when such union Carriers operate in the territory of such herds.

(i) To unionize all non-union dairies in the milk-shed and Denver, including this Company, whether their employees desire this action or not;

(j) To unionize and completely control and dominate the handling of all milk in the Denver area, regardless of the rights, privileges and desires of this Company, the Farmer-Producers, Carriers, drivers, the dairies and their employees, food store employees and the general public.

[fol. 367] (k) To compel employees of all union food stores, including Piggly-Wiggly Stores, to refuse to handle non-union milk if the same is delivered to and sold at the stores where they are employed and to picket said stores if it is so delivered and sold.

(l) To use and employ secondary boycotts in connection with said plan.

(m) To cause great financial losses to plaintiffs, Farmer-Producers, Carriers and dairies unless and until they join the union and obey its rules and regulations.

(Paragraph 15):

That part of said plan and conspiracy was put into effect from July 31 to August 2, 1945, and then suspended to September 2, when the plan was again inaugurated, and since then the same has been rapidly developed and is daily becoming more and more effective. That in pursuance of said plan defendants have now acted and put into effect the operations necessary to accomplish those portions of the plan as described in paragraph 14, sub-paragraphs (a) to (h) inclusive, (j) to (m) inclusive, and the remainder of the plan will be put into operation in the near future unless enjoined by the order of this court.

(Paragraph 16):

That said pickets have been employed and trained and [fol. 368] put to work; that they have followed non-union drivers on their routes while collecting milk; have prevented non-union Farmer-Producers from hauling and delivering their own milk to dairies; have prevented non-union drivers from handling milk in the milk-shed; have caused pickets to intercept and stop non-union drivers; have ordered and prevented all union drivers from delivering milk to non-union dairies; have ordered employees of union dairies to refuse to process and handle non-union milk; have intimidated non-union Carriers and non-union drivers from unloading their milk at Denver dairies, and have employed and used brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, secondary boycotts, fraud and false representations in connection therewith; have intimidated and coerced herd owners from shipping milk by non-union Carriers and have required them to

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change to union Carriers; have caused great financial losses to plaintiffs, Farmer-Producers, Carriers and dairies.

(Paragraph 17):

That among the false and fraudulent representations made by defendants are the following:

(a) Statements by said pickets to Carriers and drivers that other Carriers or all the other drivers of the Carrier (except the driver accosted), have joined the Union, and [fol. 369] for that reason the said driver should join;

(b) Statements by said pickets that Walter C. Moore, the manager of Denver Milk Producers, Inc., desires that all Carriers and drivers should join the Union.

(Paragraph 18):

That all of said statements were false, were made with the intent that they be acted upon and they were so acted upon; that in many cases membership was secured by reason of said statements, and all without regard to the rights, privileges and desires of the plaintiffs, Farmer-Producer, Carriers, drivers, dairies, dairy employees, and the public in general.

(Paragraph 19):

That the defendants the three Teamsters and Drivers Unions, their officers and members, since September 10th, have directed the following activities against this Company in addition to those enumerated in paragraphs 14 to 18 inclusive:

(a) They have picketed the docks of this Company where milk is unloaded by the Carriers; have blocked and prevented many non-union Carriers from entering the dock area and from unloading; have prevented all trucks driven by Union drivers for the Carriers from there unloading and ordered them not so to do, with the result that a large amount of milk consigned by the Farmer-Producers to this [fol. 370] Company has been diverted elsewhere and lost to this Company.

(d) They have demanded that the Company sign a union contract with Local No. 537. That because part of the ownership of the Company is in the estate proceedings in

the County Court, the three Teamsters and Drivers Unions prepared and exhibited to the Company a temporary agreement with Local No. 537. This required the Company to abide by all Union rules and regulations until December 31, 1945, when the estate will be closed, and then enter into the regular formal printed contract of the Union. That signing the said temporary agreement would bind the Company to agree to all the terms of the regular 12-page printed contract and agreement of Local No. 537, which contains among other provisions the following:

Article 1

All male employees working under the classifications set up in Article 3 and who are subject to the jurisdiction of the Union, shall be members of the Union, except seasonal employees as described in Article 6. Where new employees are hired, not members of the Union, they shall make application to become members within fifteen (15) days. The Union agrees that any new employees of the Employer, coming under the jurisdiction of the Union, as [fol. 371] enumerated in Article 3, who are hereafter hired and are not members of the Union, shall upon making application and offering to qualify for membership in the Union, be promptly accepted to membership without prejudice or discrimination unless the applicant is specifically denied membership in the Union by the provisions of the National Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

It is agreed that the Employer will notify the Union in writing on the first day of regular employment of all employees subject to the jurisdiction of the Union.

Article 3

This agreement shall apply only to male employees of the Employer working in the following classifications, and subject to the jurisdiction of the Union.

1. Regular route salesmen of Dairy and Supply trucks,
2. Special delivery drivers and extra drivers,
3. Regular male plant employees, who are employees engaged in the production, or actual handling of dairy products.

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4. Regular farm hands,
5. Regular milkers.

[fol. 372] Article 28

Term of Agreement. This agreement shall become effective as of April 1, 1945, and shall remain in full force and effect until April 1, 1948, * * *

(c) They have demanded that this Company refuse to accept milk except from Carriers with Union drivers, in violation of the Public Utility regulations and the statutes of this State.

(d) They have threatened the Company that if it refuses to sign the agreement they will put it out of business.

(e) They have threatened the Company with secondary boycotts; have demanded that managers and union employees of the Piggly Wiggly stores refuse to purchase and handle milk from this Company, and have their employees, members of Local No. 7, refuse to do so; and have threatened to picket said stores if purchases of milk from this Company are not stopped at once.

(f) They have demanded that Union bricklayers, members of Local No. 1, quit work on the boiler building described in paragraph 12 until this Company signs said agreement.

(g) They have intercepted and attempted to prevent the delivery of coal by The Rio Grande Fuel Company to this Company.

[fol. 373] (h) They have picketed the plant of the Company in aid of a secondary boycott against all Carriers who refuse to sign agreements with Local No. 537, and against all drivers who refuse to join the Union, so as to prevent the delivery of milk to the Company until said Carriers and drivers join the Union, and to force the Company to require said Carriers and drivers to join the Union before the Company will accept delivery of milk from them.

(Paragraph 20):

That the defendant Bricklayers Union joined in the conspiracy and unlawful act of the three Teamsters and Drivers Unions and at the end of work on September 15, 1945, established a secondary boycott against the Company, and said Union bricklayers quit and abandoned their work on

said building. That a picket line had been established against the Company on September 10. That said Union bricklayers had disregarded said picket line and worked on said Company property all of said five days regardless thereof until they joined the said conspiracy and instituted said illegal secondary boycott, which, if continued, will deprive this Company of the use of said boiler house to its great injury and damage.

[fol. 374] (Paragraph 21):

That on information and belief the Retail Clerks Union has joined or is about to join in the unlawful conspiracy with the other defendants in a secondary boycott against this Company delivering milk to the Denver Piggly Wiggly Stores; and that said threatened action is imminent and is to become effective Friday, September 21, 1945, and if it does, it will effect irreparable damage upon the Company and prevent the sale of its milk to said stores. That as a result its milk will sour, its Farmer-Producers lose their market, and the people of Denver will suffer a severe shortage of milk.

(Paragraph 23):

That on information and belief the scale of wages paid by the Company to its employees is higher than the wages paid by the Union dairies in Denver. That if the Union contract were signed by the Company, its employees stand to lose, out of said wages, the initiation fees and dues paid to Union No. 537 without any increased pay to cover the same.

(Paragraph 24): Alleges that agreement proposed by the Unions would require plaintiff to do an unlawful act and compel its employees to join the Union or lose their positions, and that such agreement would be a violation of the Labor Peace Act and the common law of Colorado, and [fol. 275] (Paragraph 25) would deprive the right of the Company to select its own employees; and (Paragraph 26) would compel the Company to coerce its employees to join the Union and perpetrate an unfair labor practice and interference with, restraint and coercion by the plaintiff in the rights of its employees to join or refuse to join a labor organization. (Paragraph 27) That none of the defendant unions nor any of them, nor any of the members represent

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a majority of the male employees of the plaintiff or any of the employees of the plaintiff and that it would be an unfair labor practice and unlawful coercion on the part of the plaintiff to accede to the demands of the defendants and sign the proposed contract and agreement, (Paragraph 28) and that if the plaintiff would sign the agreement, the plaintiff would be required by the rules and regulations of the Union to refuse to accept milk deliveries from any non-union dairies and from drivers for carriers who have not signed Union agreements, and would be required to participate in an illegal secondary boycott against said carriers and drivers.

(Paragraph 29):

That there is no labor dispute or controversy of any kind between the Company (employer) and any of its employees, and that none of them are organized in a collective bargaining unit. That no labor dispute as defined by the Colorado [fol. 376] Peace Act exists in this action or in the matters alleged therein.

(Paragraph 30):

That by the picketing of the Company against non-union Carriers and non-union drivers the defendants are attempting to coerce it to put into effect a secondary boycott against said Carriers and non-union drivers to force them to sign agreements with and join Local No. 537, all of which is illegal under the laws of Colorado.

(Paragraph 31) Alleges certain provisions of the Statutes of Colorado relating to labor activities, (Paragraph 32) that the things done by the defendants are illegal and in violation of Article II of Sec. 3 of Colorado Constitution, Statutes of the State, and Rules and Regulations of the Public Utility Commission.

(Paragraph 33):

That unless restrained by this court the illegal actions of the defendants will cause many of the Farmer-Producers to stop their shipments of milk to the Company; will prevent practically all of the Farmer-Producers from so doing; will prevent the Company from completion of its badly needed boiler house; will prevent all Carriers with Union drivers from making milk deliveries to the Company; will

prevent deliveries of coal and needed supplies to the Company; will prevent the Company from selling to Piggly [fol. 377] Wiggly Stores and other companies; and will completely ruin and destroy the business of the Company.

(Paragraph 34) Alleges that the Company has suffered great damages, the amount of which has not been ascertained, and will suffer irreparable damages unless defendants are restrained by order of court, and (Paragraph 35) that there is no plain, speedy or adequate remedy at law, and the continued conduct of defendants would require a multiplicity of suits.

Wherefore, Plaintiffs pray that the defendants and each of them be enjoined:

1. From in any manner picketing the premises of the Company.

2. From interfering with and picketing the Farmer-Producers who consign their milk to this Company and the Carriers and their drivers who pick up, haul and deliver the same to this Company.

3. From interfering with the manufacture, processing and delivery of milk by this Company.

4. From secondary boycotts of any kind against this Company.

5. From stoppage of work on its boiler house.

6. From picketing the Piggly Wiggly or any other stores against the products of this Company.

[fol. 378] 7. From soliciting customers of the Company to cease doing business with it.

8. From compelling this Company to sign a contract of any kind with the defendants or any of them.

9. From in any manner coercing the employees of this Company to join any of the defendant Unions.

10. From in any manner causing the destruction or spoilation of the products of this Company.

Also for damages against the defendants and each of them:

1. In such sum as will fully compensate the Company for any claims against it from its Farmer-Producers.

2. For all damages caused to it by the loss of milk from its Carriers and loss of market for the failure to process the same.

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3. For any and all losses from secondary boycotts.
4. For losses for stoppage of work on its boiler house.
5. For such other relief as may seem proper to the court.

TEMPORARY RESTRAINING ORDER

Temporary Restraining Order, September 21, 1945, directed to Milk Drivers' and Dairy Employees' Local Union No. 537; Teamsters Joint Council No. 54, American Federation of Labor of Denver, Colorado; Retail Clerks Union [fol. 379] No. 7, American Federation of Labor; The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, American Federation of Labor; H. E. O'Neal, as an Organizer of the said International, and personally; Howard Coffey, as an officer of Local No. 537 and of the Council, and personally; and Earl Christol, as an officer of Local No. 537, and personally, requiring them to refrain from:

1. In any manner establishing and maintaining a secondary boycott against the products of Beach Milk Co., at any of the Piggly Wiggly stores in Denver, Arvada and Aurora, Colorado, or at any other store in Colorado which purchases the products of the Company for resale to its customers.

2. In any manner establishing and maintaining pickets against or about the products of the Beach Milk Co., and against said Beach Milk Co. at or about any of said stores, and in any manner publishing it as unfair to union labor to the customers of said stores, and in any manner preventing the delivery of the products of said Company to said stores.

3. In any manner interfering with the delivery of the products of the Company to said Piggly Wiggly or other stores.

4. In any manner, as members of Retail Clerks Union No. 7, American Federation of Labor, refusing to handle and sell the products of said Company, when delivered at [fol. 380] the Piggly Wiggly or other stores which purchased the said products prior to September 20, 1945.

That from the verified complaint and verified motion the court defines the injury claimed by Beach Milk Co., to be the loss of the business of the Piggly Wiggly Stores to the amount of about $535.10 per day; the permanent loss of

the same; the spoilation, waste and destruction of its milk products because of the perishable quality and necessity of an immediate market; the inability of the Company in a few days or weeks to find customers to replace the said Piggly Wiggly; the loss of its Farmer-Producers and the milk from their fine dairy herds if the Company cannot market their products; that about half of its production goes to the Piggly Wiggly Stores; and the utter destruction of the business of the Beach Milk Co., if the alleged illegal acts of the defendants and each of them continue.

That if said facts are true, the injuries are irreparable, and plaintiffs would suffer immediate and irreparable injury, loss and damage before notice can be served and a hearing had.

That this injunction is issued under the allegations of the complaint that the defendants seek to coerce the Plaintiff to sign an unlawful contract, and its alleged acts and conduct are to enforce such unlawful act.

[fols. 381-382] That the bond of the plaintiffs on this temporary restraining order without notice is fixed at the sum of $1000.00, and the same, signed by plaintiffs and a surety company, has been tendered to the court and approved by it.

This case is set for hearing on the injunction issues for October 1, 1945 at 10 A. M. and shall be in full force and effect until that date unless such time is changed by the Court.

This order is issued this 21st day of September, 1945, at 9:15 A. M.

Done in open court.

Amendment to Complaint

Amendment filed September 25, 1945, in Cause No. A-45223, Div. 3, Flora A. Beach, et al. vs. Milk Drivers Union, et al., identical with amendment to Complaint of Denver Milk Producers, Inc., shown at Folio 16.

Order Continuing Temporary Restraining Order

Order in No. A-45223, Div. 3, September 27, 1945, continuing temporary restraining order in effect.

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JUDGMENT

Judgment in Cause No. A-45223, Beach, et al. vs. Milk Drivers Union, et al. entered February 27, 1946, dissolving temporary Injunction and dismissing cause and for recovery of costs by defendants.

Respectfully submitted, Kenneth W. Robinson, Robert Swanson, R. Hickman Walker, Attorneys for Plaintiffs in Error.

Clerk's Certificate to foregoing abstract omitted in printing.

[fol. 383] IN THE SUPREME COURT OF COLORADO

[Title omitted]

No. 15776

Error to the District Court of the City and County of Denver, State of Colorado. Hon. Joseph J. Walsh, Judge

Supplemental Abstract of Record—Filed January 25, 1947

[fol. 384] PORTION OF TESTIMONY OF WALTER C. MOORE GIVEN ON CROSS-EXAMINATION

Q. Now, you said something about Mr. Lindsey, at the Mayor's suggestion, drew up this, what they called an ordinance, and you kind of smiled, providing for an excise tax?

A. Yes, sir.

Q. You were at that meeting, weren't you?

A. Yes, sir.

Q. And the purpose was to pay a tax on every bottle of milk sold in Denver and that tax to be paid to the producers as a subsidy?

A. That is right.

Q. And the ordinance was actually passed, wasn't it?

A. Right.

Q. What did you mean when you said, "of course, it didn't mean anything"?

A. Just what statement are you referring to?

Q. Your statement, "of course, that didn't mean that," you said that.

A. According to the OPA we were losing money. Something had to be done, the City of Denver was not going to get any milk. Whether we had an excise tax or not, the farmers were going out of business and we were groping around for something, and we went to the Mayor and laid the thing before him, and I said, "What can I do?" And they had attempted this thing in Bend, Oregon, and they [fol. 385] had drawn such an ordinance, and before it went into effect the OPA granted a raise and it never went into effect.

Q. Before the Mayor did that you gave them to understand, as the head of this producers association, that there would not be any milk delivered in Denver, didn't you?

A. I told the Mayor——

Q. Is that right or wrong?

A. On the present price, yes.

Q. All right, on the present price. In other words, you threatened, as the head of the producers, to cut off the supply of milk to the whole City of Denver unless there was a raise of price?

A. You have used the wrong expression. I didn't threaten the Mayor, I informed the Mayor that we had a better market than the consumers of Denver could pay for it under the OPA ceiling and we were going to sell the milk to the highest bidder where we could.

Q. To what place were you going to sell the milk?

A. To the Adolph Coors Company.

Q. In Golden.

A. That is right.

Q. But you couldn't sell him all the milk, which is 98 percent that you control?

A. We didn't control 98 per cent.

Q. How much did you control?

A. I don't recall. We had a large part of the milk; our [fol. 386] contract provides we could not put it into effect unless we had 65 per cent.

Q. Then you must have had 65 per cent?

A. That, or more.

Q. But you admit you informed the Mayor if this price was not raised in some way, either by excise tax or the OPA, that your milk would not be delivered in Denver?

A. Yes.

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Q. You called it a tragedy, didn't you?

A. Yes, I did.

Q. And you were willing to inflict that tragedy, unless you got a higher price?

A. It didn't matter whether I inflicted a tragedy, that was the situation. You can't have farmers producing milk and losing money on it. They just won't do it.

Q. You understand the laboring man has to make enough money to live on too, don't you?

Mr. Van Cise: I object to that.

The Court: That will be stricken.

(A paper was thereupon marked for identification Defendants' Exhibit 3.)

Q. I hand you Defendants' Exhibit 3. State whether or not that is a photostatic copy of an advertisement printed in the Rocky Mountain News by the Denver Milk Producers, Inc., Walter C. Moore, Manager.

Mr. Van Cise: What is the date?

Witness: November 2, 1943. That is right.

[fol. 387] Q. You meant what you said in that advertisement, too, didn't you?

A. You bet.

Q. You were perfectly willing to stop the delivery of milk to hospitals, invalids, and children of Denver?

A. No, sir, the hospitals were always exempt.

Q. Is there anything in there about exempting hospitals?

A. No, sir, but the dealer always understood that.

Defendants' Motion to Dismiss

Mr. Hornbein: I want to make a motion for the purpose of the record, not for the purpose of arguing.

1. We move the court at this time to dismiss the petitions for injunction in all of these cases, on the grounds that it affirmatively appears from all the evidence that there was no violence, there was no force, there were no threats of force or violence, no intimidation, no coercion, and there was nothing more here than a peaceful picketing and the cessation of work on non-union material, in this case being milk, by union men.

2. That peaceful picketing, such as the evidence here discloses in this court, is protected and sanctioned by the Fourteenth Amendment to the Constitution of the United States,

which prohibits the states from depriving any person of [fol. 388] life, liberty or property, without due process of law, and also particularly by the First Amendment, which guarantees the right of free speech, free assembly, free press, and we specifically invoke and claim the protection of the Fourteenth Amendment and the guarantee of free speech and free press and free assembly guaranteed by that amendment.

3. That it appears from the evidence that the only thing the plaintiffs are complaining about, in substance, is that certain working men who are affiliated with and belong to and are members of the union in question refused, in a peaceable way, to work on, handle or process non-union material which had been transported by non-union haulers who were in competition with union haulers, and we specifically invoke the protection of the Thirteenth Amendment to the Constitution of the United States which prohibits in any place in the United States slavery or involuntary servitude, and we maintain that an injunction issued by this court which they are seeking to get which would compel the employees in these various union plants to work on matters they do not want to work on would be a violation of that amendment, because they would be compelled to work under process of the court, and that is something I conceive is not controllable under our Constitution.

That is just for the purpose of the record.

[fol. 389] EXHIBIT 3 IS OFFERED

Mr. Van Cise: This has been identified by Mr. Moore. He said he had this published in the Rocky Mountain News on November 2, 1943. Our objection was that that has no possible bearing on the controversy as to whether an injunction should be granted in any of these five cases. That was a situation on milk where they were seeking higher prices for the producers. It cannot help in the decision of this case, and it cannot hurt in the decision of this case. Therefore, it has no possible evidentiary value.

Mr. Hornbein: Our position is this: I briefly outlined it the other day. This case as it stands now and as it will be argued shows quite plainly that it is a controversy here between the producers and the dairy drivers union, in which all of the strength of the producers is pooled against my clients, and our position is going to be in the argument that

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whatever we did was predicated as part of our constitutional rights and was absolutely necessary for the defense of our organization. That the plaintiff organization and all these plaintiffs are combined to injure this union by using their economic resources, which is 98% of all the milk in Denver—using that power as a pressure on dairies and haulers not to employ union men. The court will remember that Mr. Alm of the Almhurst Dairy—I think that was the name, there was a picket on his dairy, and the [fol. 390] court will remember that he said he called up Mr. Moore and wanted his advice as to whether or not he should join the union and Mr. Moore told him definitely that he did not have to join the union and that they could get milk in here without the union, and Mr. Alm was asked why he called Mr. Moore and he said very openly that he called him because of Mr. Moore's power over the milk supply. He thought if he didn't consult him, didn't do what he wanted, his milk supply would be impaired. The same thing happened with Mr. Bullard, who testified that Mr. Moore told him to keep away from the Austin shippers, and if he didn't he would fight him; and of course, there is only one way he could fight him, and that is the milk supply.

We still have the right to speak and exhibit the banner and acquaint the public and certainly our own members, with our grievance. So we are trying to show the court there is a conspiracy here against us, and we had to use our economic power, which, as I said, consists of the working power of our clients, otherwise they would be crushed. Mr. Moore says the farmers have a tremendous animosity against this union. Whether that is true or not, I do not know; but if it is so, we certainly have a right to use our resources against their resources.

So for the purpose of showing the extent of the economic power of these producers—98% of the milk that comes into Denver—to show that economic power they publish this [fol. 391] ad which Mr. Moore admits to be true, in which they set out in the ad that practically all milk is not coming to Denver. He says, "We are going to divert this milk." To whom? To the manufacturers in other markets. That is what this ad says. They were able to force through a city ordinance to put an 8¢ tax on a gallon on milk, whether it went to hospitals, charitable institutions or children. Mr. Van Cise says that has nothing to do with this case. This was done, your Honor, in the middle of the war. Our client

didn't strike, did not boycott, during that period. They made a pledge and they observed it. This was in the middle of the war and shows the power of this organization to force through an ordinance. The fact is, it was in their power to stop the milk coming to Denver unless there was a raise in price, unless a tax was put on. Whether it went to sick people, hospitals or anything else. That is what this case is about. There is this controversy, they are arrayed on one side, they have all the milk, and by reason of that they are in a position to tell these men whether they shall join the union. If you consider the evidence, he is using his power to stop producers in giving their milk to union drivers, putting union drivers out of business. That is what defendants have to show.

Mr. Van Cise: That is just as admissible as if we tried to show that in some of the mining strikes the union was [fol. 392] guilty of violence. It is just as admissible as if we put in evidence of something that happened two years ago, whether legal or illegal. It has no bearing, and there we object.

(Further argument of counsel.)

The Court: The objection is sustained. It will be denied admission, but not with prejudice to show the present economic condition with regard to milk now.

Respectfully submitted, Philip Hornbein, Philip Hornbein, Jr., 620 Symes Building, Denver 2, Colorado, Attorneys for Defendants in Error.

Clerk's Certificate to foregoing abstract omitted in printing.

[fol. 393] IN THE SUPREME COURT OF COLORADO

No. 15776

[Title omitted]

[fol. 394] MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE —Filed July 8, 1946

[fol. 395] Comes now H. Lawrence Hinkley, Attorney General of the State of Colorado, and moves the Court and requests the Court that he be permitted to appear before this Court as Amicus Curiae in the above entitled cause.

Proceeding under Rule 115(g) of the Colorado Rules of Civil Procedure, the Attorney General sets forth the following by reason whereof such leave is sought:

1. On March 8, 1946, the Governor of the State of Colorado requested that the Attorney General ask leave to appear as Amicus Curiae, inasmuch as the constitutionality of certain portions of the Colorado Labor Peace Act (chapter 131, Session Laws 1943) was in question.

2. On March 9, 1946, the Industrial Commission of Colorado made a similar request of the Attorney General.

3. Rule 57(j) of the Colorado Rules of Civil Procedure contemplates that the Attorney General be heard when a statute is alleged to be unconstitutional. The last sentence of that subdivision is as follows:

> "In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard."

4. The Attorney General as the legal representative of the administrative agency charged with enforcement of the law is interested in the questions submitted and desires to be heard on the issues before the Court.

Wherefore, the Attorney General respectfully files motion herein and requests leave of the Court to appear as [fols. 396-397] Amicus Curiae herein and that he be per-

mitted to file brief herein within a reasonable period to be fixed by this Honorable Court.

H. Lawrence Hinkley, Attorney General of the State of Colorado.

[fol. 398] IN SUPREME COURT OF COLORADO

No. 15776

Error to the District Court of the City and County of Denver

Hon. Joseph J. Walsh.

DENVER MILK PRODUCERS, INC., HAROLD HENNIGH, E. W. JOHNSON, O. T. Holland, Eston Buster, Carl A. Borgmann and Walter H. Borgmann dba Borgmann Brothers, L. C. Austin and F. S. Austin, dba Austin Brothers, Joseph Green, Flora A. Beach, personally, and as the Executrix of the Estate of Fred W. Beach, dba Beach Milk Company, a co-partnership, Plaintiffs in Error

vs.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, Warehousemen, and Helpers Union; American Federation of Labor; Milk Drivers' and Dairy Employees' Local Union No. 537; Teamsters Joint Council No. 54, A. F. of L., of Denver, Colorado, et al., Defendants in Error.

JUDGMENT—May 19, 1947

This cause having been brought to this Court by writ of error to review the judgment of the District Court of the City and County of Denver, and having been heretofore argued by counsel and submitted to the consideration and judgment of the Court upon the matters assigned as constituting error in the proceedings and judgment of said District Court, and it now appearing to the Court that there is manifest error in the proceedings and judgment of said District Court.

It is therefore ordered and adjudged that the judgment of said District Court be, and the same is hereby, reversed, annulled and altogether held for naught; and that this cause be remanded to said District Court with instruction to rein-

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state the restraining order and make the same permanent, and for further proceedings with respect to damages and otherwise as may be necessary, such proceedings to be in harmony with the views expressed in the opinion of the Court on file herein.

It is further ordered and adjudged that the plaintiffs in error do have and recover of and from said defendants in error their costs in this Court expended, to be taxed.

[fol. 399] IN SUPREME COURT OF COLORADO

No. 15776

DENVER MILK PRODUCERS, INC., HAROLD HENNIGH, E. W. JOHNSON, O. T. Holland, Eston Buster, Carl A. Borgmann and Walter H. Borgmann dba Borgmann Brothers, L. C. Austin and F. S. Austin, dba Austin Brothers, Joseph Green, Flora A. Beach, personally, and as Executrix of the Estate of Fred W. Beach, dba Beach Milk Company, a co-partnership, Plaintiffs in Error

vs.

THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, Warehousemen, and Helpers Union; American Federation of Labor; Milk Drivers' and Dairy Employees' Local Union No. 537; Teamsters Joint Council No. 54; A. F. of L. of Denver, Colorado; Daniel J. Tobin, as President of the International and personally; Dave Beck, as Officer and Business Agent and Western States Organizer of the International, and personally; A. E. O'Neal, as International Organizer of the International, and personally, Harold Coffey, as Secretary and Treasurer of the Joint Council, as Recording Secretary of the Local No. 537, and personally; Earl Christol as Business Agent of Local No. 537, and personally; and C. W. Davis, Bertel R. Peterson, Robert Gillis, as Employees of Carlson-Frink Company, as Members of Local No. 537, and personally; A. B. Barker, Ray Cerva and Henry Oetzel as Employees of Beatrice Creamery Company, as Members of Local No. 537, and personally, Defendants in Error.

Error to the District Court of the City and County of Denver

Hon. Joseph J. Walsh, Judge.

Judgment Reversed and Cause Remanded

En Banc.

Mr. Kenneth W. Robinson, Mr. Robert Swanson, Mr. R. Hickman Walker, Attorneys for Plaintiffs in Error.

Mr. Philip Hornbein, Mr. Philip Hornbein, Jr., Attorneys for Defendants in Error.

Mr. Lawrence Hinkley, Attorney General; Mr. Duke W. Dunbar, Deputy Attorney General; Barbara Lee, Assistant Attorney General Amicus Curiae.

Mr. Justice Hays delivered the opinion of the Court.

OPINION—May 19, 1947

[fol. 400] During the month of September, 1945, five cases were filed in the district court of the City and County of Denver, allegedly growing out of the activities of the defendants in the attempt to unionize certain of plaintiffs and their employees engaged in hauling, processing and distributing milk in the Denver area. Said suits were entitled: Denver Milk Producers, Inc., plaintiffs, v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Unions, et al., defendants, Case No. A-45099; Harold Hennigh, E. W. Johnson, O. T. Holland and Eston Buster, plaintiffs, v. The International Brotherhood, et al., defendants, Case No. A-45091, Div. 1; Carl A. Borgmann and Walter Borgmann, d. b. a. Borgmann Bros., L. C. Austin and F. S. Austin, d. b. a. Austin Bros., plaintiffs, v. The International Brotherhood, et al., defendants, Case No. A-45106, Div. 1; Joseph Green, plaintiff v. The International Brotherhood, et al., defendants, Case No. A-45112, Div. 2; and Flora A. Beach, et al., plaintiffs, v. Milk Drivers' and Dairy Employees' Local Union No. 537, The International Brotherhood, et al., defendants, Case No. A-45223, Div. 3. In the last case mentioned plaintiffs made application for, and were granted, a temporary restraining order, enjoining defendants from the doing of certain things hereinafter mentioned. Upon the issuance of the restraining order in the Beach case, it was agreed by and between all the parties that said order should extend to each and all of said five

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cases. Since the restraining order was entered in the Beach case, we set forth herein the essential parts of the complaint therein, as follows:

"14. That on or about July 31, 1945, all of the defendants except the Retail Clerks Union and the Bricklayers Union entered into a conspiracy and agreement to prevent the delivery of milk to this Company and other non-union dairies, and to prevent the proc- [fol. 401] essing, sale and delivery of said milk by this Company and other dairies to their customers in Denver and in the Denver milk-shed, unless and until this Company, the Carriers, Farmer-Producers and other dairies joined Local No. 537. That in pursuance of said plan they agreed among other things to do and perform the following acts:

"(a) To employ and train groups of Union men as pickets to carry out any and all orders of the officers of the defendant Teamsters and Drivers' Union;

"(b) To cause said pickets to follow non-union drivers of the Carriers while on their routes collecting milk;

"(c) To prevent individual Farmer-Producers from hauling and delivering any of their own milk products to any dairy in the milk-shed unless such farmer is a member of Local No. 537;

"(a) To prevent any Carrier from employing non-union drivers to work in the milk-shed, and in Denver, and to prevent any such driver from handling any milk therein;

"(e) To cause said pickets to intercept and stop all non-union drivers before they enter the grounds of or at the unloading docks of all dairies, whether union or non-union;

"(f) To order, instruct and stop all union drivers from delivering any milk to non-union dairies;

"(g) To intimidate all non-union Carriers and their non-union drivers from collecting milk from Farmer-Producers and unloading their milk at all dairies, and to accomplish the same by brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, fraud, and false representations;

"(h) To intimidate and coerce all Farmer-Producers and dairies which own herds from shipping

their milk by non-union Carriers and to require them to change to union Carriers when such union Carriers operate in the territory of such herds.

"(i) To unionize all non-union dairies in the milk-shed and Denver, including this Company, whether their employees desire this action or not;

"(j) To unionize and completely control and dominate the handling of all milk in the Denver area, regardless of the rights, privileges and desires of this Company, the Farmer-Producers, Carriers, drivers, the dairies and their employees, food store employees and the general public.

"(k) To compel employees of all union food stores, including Piggly Wiggly Stores, to refuse to handle non-union milk if the same is delivered to and sold at the stores where they are employed and to picket said stores if it is so delivered and sold,

[fol. 402] "(l) To use and employ secondary boycotts in connection with said plan.

"(m) To cause great financial losses to plaintiffs, Farmer-Producers, Carriers and dairies unless and until they join the Union and obey its rules and regulations.

"15. That part of said plan and conspiracy was put into effect from July 31 to August 2, 1945, and then suspended to September 2, when the plan was again inaugurated, and since then the same has been rapidly developed and is daily becoming more and more effective. That in pursuance of said plan defendants have now acted and put into effect the operations necessary to accomplish those portions of the plan as described in paragraph 14, sub-paragraphs (a) to (h) inclusive, (j) to (m) inclusive, and the remainder of the plan will be put into operation in the near future unless enjoined by the order of this court.

"16. That said pickets have been employed and trained and put to work; that they have followed non-union drivers on their routes while collecting milk; have prevented non-union Farmer-Producers from hauling and delivering their own milk to dairies; have prevented non-union drivers from handling milk in the milk-shed; have caused pickets to intercept and stop non-union drivers; have ordered and prevented all

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union drivers from delivering milk to non-union dairies; have ordered employees of union dairies to refuse to process and handle non-union milk; have intimidated non-union Carriers and non-union drivers from unloading their milk at Denver dairies, and have employed and used brawn, display of force, threats, coercion, force, blockades, interference, mass picketing, secondary boycotts, fraud and false representations in connection therewith; have intimidated and coerced herd owners from shipping milk by non-union Carriers and have required them to change to union Carriers; have caused great financial losses to plaintiffs, Farmer-Producers, Carriers and Dairies.

"17. That among the false and fraudulent representations made by defendants are the following:

(a) Statements by said pickets to Carriers and drivers that other Carriers or all the other drivers of the Carrier (except the driver accosted), have joined the Union, and for that reason the said driver should join.

(b) Statements by said pickets that Walter C. Moore, the manager of Denver Milk Producers, Inc. desires that all Carriers and drivers should join the union.

[fol. 403] "18. That all of said statements were false, were made with the intent that they be acted upon and they were so acted upon; that in many cases membership was secured by reason of said statements, and all without regard to the rights, privileges and desires of the plaintiffs, Farmer-Producer, Carriers, drivers, dairies, dairy employees, and the public in general.

"19. That the defendants the three Teamsters and Drivers Unions, their officers and members, since September 10th, have directed the following activities against this Company in addition to those enumerated in paragraphs 14 and 18 inclusive:

"(a) They have picketed the docks of this Company where milk is unloaded by the Carriers from entering the dock area and from unloading; have prevented all trucks driven by Union drivers from the Carriers from there unloading and ordered them not so to do, with the result that a large amount of milk consigned by the Farmer Producers to this Company has been diverted elsewhere and lost to this Company.

"(b) They have demanded that the Company sign a union contract with Local No. 537. That because part of the ownership of the Company is in the estate proceedings in the County Court, the three Teamsters and Drivers Unions prepared and exhibited to the Company a temporary agreement with Local No. 537. This required the Company to abide by all Union rules and regulations until December 31, 1945, when the estate will be closed, and then enter into the regular formal printed contract of the Union. That signing the said temporary agreement would bind the Company to agree to all the terms of the regular 12-page printed contract and agreement of Local No. 537, which contains among other provisions the following:

" 'Article 1

" 'All males employees working under the classifications set up in Article 3 and who are subject to the jurisdiction of the Union, shall be members of the Union, except seasonal employees as described in Article 6. Where new employees are hired, not members of the Union, they shall make application to become members with- fifteen (15) days. The Union agrees that any new employees of the Employer, coming under the jurisdiction of the Union, as enumerated in Article 3, who are hereafter hired and are not members of the Union, shall upon making application and offering to qualify for membership in the Union, be promptly accepted to membership without prejudice or discrimination unless the applicant is specifically denied membership in the Union by the provisions of the National Constitution of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

" 'It is agreed that the Employer shall notify the Union in writing on the first day of regular employ- [fol. 404] ment of all employees subject to the jurisdiction of the Union.

* * * * * * *

" 'Article 3

" 'This agreement shall apply only to male employees of the Employer working in the following classifications and subject to the jurisdiction of the Union:

" '1. Regular route salesmen of Dairy and Supply trucks,

" '2. Special delivery drivers and extra drivers,

" '3. Regular male plant employees, who are employees engaged in the production, or actual handling of dairy products.

" '4. Regular farm hands,

" '5. Regular Milkers.

• • • • • • •

" 'Article 28

" '*Term of Agreement.* This agreement shall become effective as of April 1, 1945, and shall remain in full force and effect until April 1, 1948, • • •'

"(c) They have demanded that this Company refuse to accept milk except from Carriers with Union drivers, in violation of the Public Utility regulations and the statutes of this State.

"(d) They have threatened the Company that if it refuses to sign the agreement they will put it out of business.

"(e) They have threatened the Company with secon--boycotts; have demanded that banagers and union employees of the Piggly Wiggly union stores refuse to purchase and handle milk from this Company, and have their employees, members of Local No. 7 refuse to do so; and have threatened to picket said stores if purchases of milk from this Company are not stopped at once.

"(f) They have demanded that Union bricklayers members of Local No. 1, quit work on the boiler building described in paragraph 12 until this Company signs said agreement.

"(g) They have intercepted and attempted to prevent the delivery of coal by The Rio Grande Fuel Company to this Company.

[fol. 405] "(h) They have picketed the plant of the company in aid of a secondary boycott against all Carriers who refuse to sign agreements with Local No. 537, and against all drivers who refuse to join the Union, so as to prevent the delivery of milk to the Company until said Carriers and drivers join the Union, and to force the Company to require said Carriers and drivers to join the Union before the Company will accept delivery of milk from them.

"20. That the defendant Bricklayers Union joined in the conspiracy and unlawful act of the three Teamsters and Drivers Unions and at the end of work on September 15, 1945, established a secondary boycott against the Company, and said Union Bricklayers quit and abandoned their work on said building. That a picket line had been established against the Company on September 10. That said Union bricklayers had disregarded said picket line and worked on said Company property all of said five days regardless thereof until they joined the said conspiracy and instituted said illegal secondary boycott, which, if continued, will deprive this Company of the use of said boiler house to its great injury and damage.

"21. That on information and belief the Retail Clerks Union has joined or is about to join in the unlawful conspiracy with the other defendants in a secondary boycott against this Company delivering milk to the Denver Piggly Wiggly stores; and that said threatened action is imminent and is to become effective Friday, September 21, 1945, and if it does, it will effect irreparable damage upon the Company and prevent the sale of its milk to said stores. That as a result its milk will sour, its Farmers-Producers lose their market, and the people of Denver will suffer a severe shortage of milk.

"22. That many of the selected Farmer-Producers who ship their milk to the Company will be lost to it if the same has to be shipped by Union Carriers and the Company alleges on information and belief that many of its Farmer-Producers will go out of business, or ship their milk to other dairies if it signs said agreement.

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"23. That on information and belief the scale of wages paid by the Company to its employees is higher than the wages paid by the Union dairies in Denver. That if the Union contract were signed by the Company, its employees stand to lose, out of said wages, the initiation fees and dues paid to Union No. 537, without any increased pay to cover the same.

"24. That the agreement proposed by the said Unions would require this Company to do an unlawful act and compel its employees to join said Union or lose their positions, and such agreement would be in violation of the Labor Peace Act and common law of this State.

[fol. 406] "25. That the contract and agreement demanded by the defendant Teamsters and Drivers Union violate the right of the Company to select its own employees.

"26. That if the proposed contract and agreement of the defendant Local No. 537 were signed by the Company, it would compel the Company to coerce its employees to join the Union and to perpetrate an unfair labor practice, and an interference with, restraint and coercion by the Company in the rights of its employees to join or refuse to join a labor organization.

"27. That none of the defendant Unions nor any of them nor any of their members represent a majority of the male employees of this Company or any of said employees of this Company, and it would be an unfair labor practice and unlawful coercion on the part of the Company to accede to the demand of the defendants and sign said contract and agreement.

"28. That if the Company would sign the said temporary or final agreements with Local No. 537, it would be required by the rules and regulations of said Union to refuse to accept milk deliveries from any non-union dairies, and from drivers for Carriers who have not signed Union Agreements, and would thus be required to participate in an illegal secondary boycott against said Carriers and drivers.

"29. That there is no labor dispute or controversy of any kind between the Company (employer) and any of its employees, and that none of them are organized in a collective bargaining unit. That no labor dispute

as defined by the Colorado Peace Act exists in this action or in the matters alleged herein.

"30. That by the picketing of the Company against non-union Carriers and non-union drivers the defendants are attempting to coerce it to put into effect a secondary boycott against said Carriers and non-union drivers to force them to sign agreements with and join Local No. 537, all of which is illegal under the laws of Colorado.

"31. That the statutes of the State of Colorado give employees the right to refrain from joining any labor organization or from participating in any of its activities; and makes it an unfair labor practice for an employee individually or with others to hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind, the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment; to engage in a secondary boycott, or to hinder or prevent, by threats, intimidation, force, or coercion, the obtaining, use or disposition of materials, equipment or services, or to combine or conspire to hinder and prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or services.

"32. That said plan and conspiracy and the acts and things done under it, and intended to be done by the defendants is illegal and in violation of Article II, [fol. 407] Section 3 of the Constitution of the State of Colorado, the Statutes of the State, and the Rules and Regulations of the Public Utility Commission of Colorado.

"33. That unless restrained by this court the illegal actions of the defendants will cause many of the Farmer-Producers to stop their shipments of milk to the Company; will prevent practically all of the Farmer-Producers from so doing; will prevent the Company from completion of its badly needed boiler house; will prevent all Carriers with Union Drivers from making milk deliveries to the Company; will prevent deliveries of coal and needed supplies to the Company; will prevent the Company from selling to Piggly Wiggly Stores and other companies; and will completely ruin and destroy the business of the Company.

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"34. That the Company has suffered great damages, the amount of which cannot as yet be ascertained, and will suffer irreparable damages unless the defendants and each of them are restrained by order of this court.

"35. That there is no plain, speedy or adequate remedy at law, and the continued conduct of defendants would require a multiplicity of suits."

Thereupon the plaintiffs prayed for a temporary restraining order, injunction, and damages. Said complaint in the Beach case was presented to the trial court and upon an ex parte application, Judge Steele issued a restraining order, which, omitting formal parts thereof is as follows:

"At this day come the plaintiffs by their attorney, and the said plaintiffs having filed their complaint in our District Court against the above named Defendants praying for a restraining order against said Defendants, requiring them to refrain from certain acts, in said complaint, and hereinafter more particularly mentioned. On reading the said complaint in this action, and it satisfactorily appearing to the Court therefrom, that it is a proper case for a restraining order, and that sufficient grounds exist therefor, and the necessary and proper undertakings having been given:

"It Is Therefore ordered by the Court that until the further order of said Court, you and each and every — of you, your and each of your servants, agents, attorneys, employees, and all persons acting under the control, authority or direction of you, do absolutely refrain from and desist from:

[fol. 408] "1. In any manner establishing and maintaining a secondary boycott against the products of Beach Milk Co., at any of the Piggly Wiggly stores in Denver, Arvada and Aurora, Colorado, or at any other store in Colorado which purchases the products of the Company for resale to its customers.

"2. In any manner establishing and maintaining pickets against or about the products of the Beach Milk Co., and against said Beach Milk Co. at or about any of said stores, and in any manner publishing it as unfair to union labor to the customers of said stores,

and in any manner preventing the delivery of the products of said Company to said stores.

"3. In any manner interfering with the delivery of the products of the Company to said Piggly Wiggly or other stores.

"4. In any manner, as members of Retail Clerks Union No. 7, American Federation of Labor, refusing to handle and sell the products of said Company, when delivered at the Piggly Wiggly or other stores which purchased the said products prior to September 20, 1945.

"That from the verified complaint and verified motion the court defines the injury claimed by Beach Milk Co., to be the loss of the business of the Piggly Wiggly Stores to the amount of about $535.10 per day; the permanent loss of the same; the spoilation, waste and destruction of its milk products because of the perishable quality and necessity of an immediate market; the inability of the Company in a few days or weeks to find customers to replace the said Piggly Wiggly; the loss of its Farmer-Producers and the milk from their fine dairy herds if the Company cannot market their products; that about half of its production goes to the Piggly Wiggly Stores; and the utter destruction of the business of the Beach Milk Co., if the alleged illegal acts of the defendants and each of them continue.

"That if said facts are true, the injuries are irreparable, and plaintiffs would suffer immediate and irreparable injury, loss and damage before notice can be served and a hearing had.

"That this injunction is issued under the allegations of the complaint that the defendants seek to coerce the Plaintiff to sign an unlawful contract, and its alleged acts and conduct are to enforce such unlawful act.

"That the bond of the plaintiffs on this temporary restraining order without notice is fixed at the sum of $1000.00, and the same, signed by plaintiffs and a surety company, has been tendered to the court and approved by it.

[fol. 409] "This case is set for hearing on the injunction issues for October 1, 1945 at 10 A. M. and shall be

in full force and effect until that date unless such time is changed by the court.

"This order is issued this 21st day of September, 1945, at 9:15 A. M."

The above restraining order was entered as aforesaid in each of the other four cases and by successive orders of the district court and supersedeas here, the same has been and now is in full force and effect. It was further stipulated that in so far as the hearing on the injunctions was concerned, that the cases should be consolidated, but in the event the restraining order was made a permanent injunction, the question of damages should be tried separately in each case.

The consolidated cases were tried before Judge Walsh, and at the conclusion of plaintiffs' testimony the defendants interposed a motion to dismiss which was denied, and at the conclusion of all the evidence the motion was renewed, and sustained.

The trial court in its ruling upon said motion to dismiss, stated that it "has come to the conclusion that this case can be decided by an answer to this question:

"Can the State pass an act defining a 'labor dispute' so as to enjoin a union from the commission of certain acts defined to be unfair labor practices, when the purpose is to urge employer and employees to join a union, and where there exists no employer-employee relationship?

"If so, many of the cases cited by counsel for the plaintiffs apply and the temporary injunction heretofore issued should be made permanent, and the question of damages determined on further trial. On the other hand, if the State is prohibited from so defining a labor dispute that the commission of certain acts deprives the defendants of certain fundamental rights secured to them by the Constitution of the United [fol. 410] States, then the cases cited by counsel for the defendants apply and the motion to dismiss should be granted."

For a proper understanding of the above quoted question it is necessary to examine the act mentioned by the court.

Section 94(16), chapter 97, 1946 Cumulative Supplement to 1935 Colorado Statutes Annot-ed (Section 16, chapter 131, page 411, S. L. '45) provides as follows:

"Except as otherwise provided in this subdivision no court, nor any judge or judges thereof shall have jurisdiction to issue in any case involving or growing out of a labor dispute, as herein defined, any restraining order or temporary or permanent injunction which in specific or general terms prohibits any person or persons from doing, whether singly or in concert, any of the following acts:

"(1) Ceasing or refusing to perform any work or to remain in any relation of employment regardless of any promise, undertaking, contract or agreement to do such work or to remain in such employment;

"(2) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 94 (17) of this subdivision;

"(3) Paying or giving to, or withholding from any person any strike or unemployment benefits or insurance or other moneys or things of value;

"(4) By all lawful means aiding any person who is being proceeded against in, or is prosecuting any action or suit in any court of this state;

"(5) Giving publicity to and obtaining or communicating information regarding the existence of, or the facts involved in, any dispute, whether by advertising, speaking, without intimidation or coercion, or by any other method not involving fraud, violence, breach of the peace, or threat thereof;

"(6) Ceasing as an organization to patronize any person with which such organization has a labor dispute or to employ any person or persons;

"(7) Assembling peaceably to do or to organize to do any of the acts heretofore specified or to promote lawful interests;

"(8) Advising or notifying any person or persons of an intention to do any of the acts heretofore specified;

"(9) Agreeing with other persons to do or not to do any of the acts heretofore specified;

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[fol. 411] "(10) Advising, urging, or inducing without fraud, violence, or threat thereof, others to do the acts heretofore specified, regardless of any such undertaking or promise as is described in section 94 (17) of this subdivision;

"(11) Doing in concert of any or all of the acts heretofore specified on the ground that the persons engaged therein constitute an unlawful combination or conspiracy."

The definition of "labor dispute" to which the court in its opinion refers and which term appears in the above statute, is set forth in paragraph 7, section 94 (2) (Section 2 (7), c. 131, p. 395, S. L. '43) of the act, as follows:

"The term 'labor dispute' means any controversy between an employer and such of his employees as are organized in a collective bargaining unit, concerning the rights or process or details of collective bargaining. The entering into of a contract for an 'all union agreement' or the refusal of an employer to enter into an 'all-union agreement' shall not constitute a labor dispute. It shall not be a labor dispute where the disputants do not stand in the proximate relation of employer and employee. No jurisdictional dispute or controversy between two or more unions as to which of them has or shall have jurisdiction over certain kinds of work; or as to which of two or more bargaining units constitute the collective bargaining unit as to which the employer stands impartial or ready to negotiate or bargain with whichever is legally determined to be such bargaining unit, shall constitute a labor dispute.

"The general right of an employer to select his own employees is recognized and shall be fully protected. It shall not constitute a labor dispute if an employer discharges, or refuses to employ, an employee on account of incompetence, neglect of work, unsatisfactory service or dishonesty, but the discharge of an employee, or the refusal to employ an employee, shall constitute a labor dispute only when such discharge or refusal to employ is founded upon membership in a union or labor organization or activity therein or when such discharge or failure to employ is in violation of a contract."

In order properly to determine whether or not the trial court erred in not making the temporary restraining order a permanent injunction, we deem it necessary to examine the restraining order to ascertain whether or not it violated [fol. 412] the statute (Sec. 94, 16, Supra). The order restrained the defendants in substance from doing the following things:

(a) Establishing and maintaining a secondary boycott on Piggly Wiggly stores;

(b) Placing pickets around said stores;

(c) Publishing that the sale of Beach Milk products by said stores was unfair to labor;

(d) From preventing or interfering with the delivery of the Beach products to said stores; and

(e) From refusing to handle and sell said products as members of the Retail Clerk's Union.

By the act above mentioned, the Court is prohibited from restraining the commission of eleven separate and distinct acts "in any case involving or growing out of a labor dispute, as herein defined * * *". There is no prohibition against restraining those same acts in any other kind of a dispute, and no proscription against restraining the commission of acts even in a *labor dispute* other than those acts expressly set forth in the statute.

Is this a *"case involving or growing out of a labor dispute"?* The answer, of course, must be found in the application of the legislative definition, supra.

The definition may be considered as consisting of two propositions: (1) What *is* a labor dispute and (2) what is not a labor dispute.

What *is* a labor dispute may be defined in substance to mean:

1. "Any controversy between employer and such of his employees as are organized in a collective bargaining unit, *concerning the rights or process or details of collective bargaining";*

[fol. 413] 2. The refusal to employ or the discharge of an employee when such is founded upon membership in a union or labor organization or activity or where such discharge of failure to employ is in violation of a contract.

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What *is not* a labor dispute can be said in substance to be:

1. Entering into or refusing to enter into an "all-union agreement";

2. Where the disputants do not bear the relationship of employee and employer;

3. Jurisdictional disputes between unions;

4. Disputes as to with which of two or more rival bargaining units the employer must negotiate, where employer is willing to negotiate with whichever is legally determined to be the bargaining unit;

5. Refusal to employ or the discharge of an employee on account of incompetence, neglect of work, unsatisfactory service, or dishonesty;

6. Any controversy between an employer and such of his employees as are organized in a collective bargaining unit, which does not concern "the rights or process or details of collective bargaining."

Further light upon the question as to whether or not this suit grew out of a *labor dispute* within the purview of the act can be obtained by an examination of the following excerpts from the findings of the trial court on application for permanent injunction, to-wit:

> *The Beach Milk Company, plaintiff in case No. 45223, Division 3, is a non-union dairy.* It was contacted to join the union some six or eight months prior to the time the present controversy arose, but was not interested at that time. On September 1, 1945, the Beach [fol. 414] Milk Company had a production of about 2200 gallons of milk, employed 27 persons, of whom 21 would be eligible for union membership. At the time this controversy arose they were in the process of erecting a new boiler plant which it was hoped would be in operation by November 1, 1945. The company sells milk to restaurants, hotels, the Piggly-Wiggly Stores and the Army. Its two largest customers are the United States Government, which takes 1000 gallons of milk daily for Buckley Field, and some 24 to 26 Piggly-Wiggly stores, supplying practically the entire supply of milk retailed by these stores. F. Leonard Beach is the Manager of the Company, which was originally a co-partnership composed of his father and

mother. The father is now deceased and his estate is in the course of administration.

"The Company was contacted by Messrs. Coffey and Christol, Union representatives, on September 10, 1945 and F. Leonard Beach was advised if he did not sign a union contract his plant would be picketed and pressure would be brought to bear on the Piggly-Wiggly Stores to have them discontinue purchasing Beach Milk. Up to this time the Company was getting both 'union' and 'non-union' milk. After unsuccessful negotiations to sign up the Company and its employees in the union, the plant was picketed—the picket carrying a sign with the legend 'Unfair to Local No. 537'.

"Negotiations with union representatives extended over a number of days and also with Mr. Nathan Creamer, attorney for the Beach estate. At one of these sessions Mr. Beach asserted that Mr. Christol had said, in answer to a question by Mr. Beach as to what would happen if he did not join the union, 'the union will put forth every effort to destroy the Beach Milk Company as a business.' Mention of a secondary boycott was implied by a mention of the union's power with the Piggly-Wiggly Stores. Picketing did start on the Beach plant on September 10, 1945, and continued until the temporary restraining order was issued by Judge Steele on September 21, 1945. This interference on the part of the union caused the Company to lose producer-shippers, such as those that came over the Rein truck line which became unionized and would not deliver to his plant. The Company also maintains that it had the problem that if it did become unionized it would lose farmer-producers who had evinced animosity towards union and union dairies. From September 10th to 21st many of the company's regular shippers were cut off and the company had to obtain milk of an inferior grade from Johnstown to make up some of the deficiency. There was also interference with the union bricklayers working on the boiler plant, who ceased employment and the Company had trouble on- time in getting its coal promptly delivered by the Rio Grande Fuel Company, which employs union drivers.

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"Under the Army contract the Beach Company is obligated to furnish a special grade of milk. The [fol. 415] Farmer-producer receives a bonus for the milk produced by him and in turn the Army was permitted to buy this milk from the Beach Company at a one-half cent increase in price per quart above the OPA ceiling price. To obtain this high grade quality milk, the Beach Company installed a special inspection system whereby the herds of the farmer-producers were regularly inspected and scientifically improved methods of production imposed on the farmer-producers and insisted on. Loss of the Piggly-Wiggly and Army business would have been serious to the Company because it would have had a large supply of milk for which there would have been no outlet.

"There was no denial oh the part of the union that it had had negotiations with Mr. Beach looking to unionizing the plant, that it had established a picket line, that a number of union representatives had congregated across the street one day, and that the truck drivers delivering the milk to the dairy were contacted in an attempt to get them to join the union, but stated that all of this was done in a peaceable manner, without any disturbance and with no threat of violence.

"During this period of time the Almhurst Dairy and the Stearns Dairy suffered interference. With respect to the Almhurst Dairy, it was a non-union dairy and, like the Beach Milk Company, was engaged in construction work under a union contractor employing union labor. Lenus Alm is the owner of the Almhurst Dairy, located at 190 West Nevada and has seven employees. It is a member of the Denver Milk Producers association and, as stated, was a non-union dairy prior to September 20th or 21st, since which time it has become unionized. Sometime in September, 1945, there were three union bricklayers working on the addition which was to cost somewhere in the neighborhood of $40,000.00 and about four more weeks were needel to complete the building. His employees had never asked whether they should join or not join the union. Union representative Coffey and Christol contacted him sometime before September 17th. They had a union contract and wished him to sign, and advised him at that time that they had Beach about

signed up. Tuesday, September 18, 1945, he was again contacted and asked if he was ready to sign up and he asked Coffey and Christol to come to his home to discuss the matter because they could discuss it more quietly. In the meantime he had talked to James Logan and Mr. Hall of the Colorado Employers Council and had advised them that he was going to be picketed unless he joined the union and wanted their advise. His place was picketed, so he called Coffey from Logan's office and Coffey promised to take the picket off if he signed, so he did sign a union contract on September 20th or 21st, but frankly states that he would not have signed if the union bricklayers had not struck. He maintained that he was paying more than the union scale to his employees. He also contacted Mr. Moore of the Denver Milk Producers association, who [fol. 416] advised him he did not have to sign with the union and Mr. Moore thought he could get milk into his plant without his signing. In his discussions with his employees about joining the union some said they would and some said they would not.

"With respect to the Stearns Dairy, on April 3, 1945 they had signed a contract with the union, but certain conditions of the contract as to wages and commission had not been agreed upon. These issues had been submitted to a panel of the National War Labor Board, but the Board had failed to issue directive order and the matter had been referred back to the employer and employees. Mr. Hillmeyer, President of the Stearns Dairy, was contacted one morning somewhere between 4:30 and 5:00 o'clock, A. M., and advised that if he did not sign a union contract his milk would not go out. After some bickering, he acceded to the demands of the union. The Stearns Dairy used to receive milk delivered by non-union carriers, and upon being advised that his employees could and would not work on this milk he was compelled for over a week to haul his own milk. Mr. Coffey, the union representative, admitted that there was a controversy with the Stearns Company and with respect to the refusal of the drivers to deliver milk on September 7, 1945. Mr. Coffey claimed that Mr. Hillmeyer had broken an appointment to settle the matter, but that the matter was finally settled, namely, on the morning of September

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7, 1945, by Mr. Hillmeyer agreeing to the union's conditions, namely, paying back pay of $100.00 and $210.00 per month to the drivers.

"In carrying out the threat of a secondary boycott made by the union representatives to the Beach Milk Company, various union officials, namely, Coffey, Christol, Pixler, Dinsmore and Maxwell (the latter representing the Retail Clerk's Union) contacted Mr. E. H. Lambotte, President of the Piggly-Wiggly Stores Company, which operates under a franchise from the main office with headquarters in Atlanta, Georgia. Some nine owners or managers of Piggly-Wiggly stores were also contacted. Mr. Lambotte discussed the milk situation with Mr. O'Neal, Mr. Coffey and Mr. Voorhies (the latter a representative of the Bakery Drivers Union). Mr. Lambotte was advised on September 11, 1945, that the union was having trouble with the Beach Milk Company and he was requested to use his good offices in trying to persuade Beach to sign a union contract, and he was advised that if Beach refused it might be necessary to establish a secondary boycott of the Piggly-Wiggly stores. Lambotte did call Beach. On September 19, 1945 Coffey advised Lambotte that the union was going to picket the Piggly-Wiggly stores. Coffey was considerate of their position and advised him to have the stores make their arrangements for a milk supply.

"The Company has no special policy as to whether its stores are union or non-union, leaving it to the individual store whether to unionize or not. Lambotte [fol. 417] was advised by Mr. O'Neal that no picket line would be established until they got another supply. However, on Thursday, September 20th, he was advised that the stores would be picketed the next day, so he advised Beach not to deliver and also contacted every Piggly-Wiggly store as to the situation. The issuance of the temporary restraining order obviated further action, as Beach was allowed to continue deliveries. He states that Piggly-Wiggly relations with the union had been friendly and all of the negotiations he had were conducted in a businesslike manner without threats. He was confident no store would accept Beach milk if it was picketed.

"As stated, some nine Piggly-Wiggly owners and managers were contacted prior to September 20th, four of them being union and five non-union stores. They were advised not to accept Beach milk and there were instances where the union representatives were angry because certain owners had accepted milk after being advised not to do so. In one instance William White, manager of Piggly-Wiggly store at 1211 East Alameda, was advised by Mr. Dinsmore on September 20, 1945, that there was trouble with Beach and stated to Mr. White, 'I am telling you now if you accept milk tomorrow from Beach we will slap a picket on the store.' The Piggly-Wiggly stores got practically all of their supply of milk from the Beach Milk Company."

We have taken the above excerpts from the findings, of the trial court as they pertain to the Beach case because, as above stated, the temporary restraining order set forth in this record was issued in the Beach case, and, by stipulation extended to the other cases. It would unnecessarily lengthen this opinion to quote all the facts contained in the findings of the trial court pertaining to the other cases, in view of the stipulation of counsel that the facts are sufficiently similar to justify the issuance of the temporary restraining order in each of the cases, and especially in view of the following statements of the trial court in its findings:

"These cases were argued and submitted together and may be disposed of in a single opinion because the law involved governs the general factual situation existing in all of the cases.

• • • • • • •

"The situation existing in each case may be gathered from the foregoing general statement of facts. Of [fol. 418] course, some of the facts overlap in the various cases, while other facts are pertinent only to a particular case. However, in general the situation must be viewed as constituting one controversy."

From the above and foregoing it is apparent, and we so find, that Judge Walsh, in his findings on the hearing on injunction, reached the proper, logical and inescapable conclusion that if the definition of "labor dispute" is valid

"many of the cases cited by counsel for the plaintiffs apply and the temporary injunction heretofore issued, should be made permanent, and the question of damages determined on further trial."

The principal question herein is whether or not the legislative definition of "labor dispute" set forth in section 2, paragraph 7, chapter 131, Session Laws 1943, is valid. In this connection the trial court said:

> "The court feels that the definition of a 'labor dispute' as defined in the Colorado Labor Peace Act of 1943, is too strained and narrow. That if the conduct of defendants can be classified so as to make them guilty of unfair trade practices under that narrow definition, and if this definition be permitted to stand, that there has been an invasion of their constitutional rights."

To reach a proper conclusion on the above question, section 16 of the act must be considered with said paragraph 7 of section 2. When so considered and taken together, those sections mean that courts of Colorado are divested of all jurisdiction to grant restraining orders or injunctions which prohibit any person from doing certain specific things therein mentioned "in any case involving or growing out of a 'labor dispute,' as herein defined."

In the absence of any statute on the subject there is no restriction on the courts in granting restraining orders or injunctions in any case. It is only in cases involving "labor disputes" that the court does not have jurisdiction to grant [fol. 419] such orders. The statute does not take away any rights from defendants, but bestows upon them additional rights in "labor disputes" not theretofore possessed. It creates a defense in labor disputes against actions for restraining orders and injunctions not permitted in other disputes. The gist of the defendants' argument is that the statute is void and unconstitutional because it is not more generous. The same argument could be advanced against the Workmen's Compensation Act of Colorado because it allows fourteen dollars a week for temporary total disability instead of awarding a larger sum. There is no constitutional right to have an act passed by the legislation divesting courts of jurisdiction in specific cases and no one has a constitutional right to a repeal of said act. The legis-

lature created the defense and by the same token can take it away. If the act is held invalid, as defendants ask, the statutory defenses permitted in labor disputes would be eliminated and such controversies controlled by the general rules of this court as in other cases. That is not what the defendants really want. They seek to have the definition, "labor dispute" so liberalized as to include a larger field wherein no injunction may issue. Naturally we have no power or authority to legislate upon the subject and such arguments should be addressed to the general assembly and not to this court.

Unless the Constitution in express terms or by necessary implication limits it, the legislature may exercise its sovereign power in any way which in its judgment will best *sub*serve the general welfare. *People v. Richmond*, 16 Colo. 274, 26 Pac. 929; *In re Kindergarten Schools*, 18 Colo. 234, 32 Pac. 422.

[fol. 420] The legislature may enact any law not expressly or inferentially prohibited by the Constitution of the state or nation. *Mauff v. People*, 52 Colo. 562, 123 Pac. 101.

It has many times been held by this court that the legislature has plenary power to legislate, subject only to limitations of state and federal Constitutions. *Colacino v. People*, 80 Colo. 417, 252 Pac. 350; *People, ex rel. v. McNichols*, 91 Colo. 141, 13 P. (2d) 266; *Metzger v. People*, 98 Colo. 133, 53 P. (2d) 1189.

An "act is not unconstitutional because it changes the rule of public policy." *Rifle Potato Growers Ass'n. v. Smith*, 78 Colo. 171, 240 Pac. 937.

Courts should not legislate, neither should they destroy legislation when by careful and conservative decision legislative enactments may be upheld, and any unnecessary overthrow of an act of the general assembly by judicial decision is as much a usurpation of legislative power as an attempt at affirmative legislation. *In re House*, 23 Colo. 87, 46 Pac. 117, 33 L. R. A. 832; *Lewis v. Parker*, 4 Colo. Law Report 300.

The question of the wisdom, justice, policy or expediency of a statute are for the legislature alone and not for the courts. *Schwartz v. People*, 46 Colo. 239, 47 Colo. 483, 104 Pac. 92; *Martin v. People*, 69 Colo. 60, 168 Pac. 1171; *Chicago Title & Trust Co. v. Patterson*, 63 Colo. 534, 178 Pac. 13.

In *American Federation of Labor v. Reilly*, 113 Colo. 90, 155 P. (2d) 145, the whole act, chapter 131, S. L. '43, was

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challenged as to its legality, and this court, on review, held that sections 20 and 21 of said act were invalid in their entirety, and that certain other minor provisions which are [fol. 421] closely related to and dependent upon said sections, were likewise invalid, and we refused to pass upon the constitutionality of other sections of act.

A controversy, similar in many respects to the instant one, was considered, by the Supreme Court of the United States in the recent case of *United States v. United Mine Workers and John L. Lewis*, 67 S. Ct. 677, 91 L. Ed. 595, decided March 6, 1947. That case involved the Norris-LaGuardia act of congress, which is very similar and in many particulars identical to the Colorado Labor Peace Act. Section 4 of the Norris-LaGuardia act provided:

> "No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:"

Immediately following the above is set forth specific acts which the courts are prohibited from restraining or enjoining.

The petitioner in the above case made application to the United States Court of Appeals for the District of Columbia for an order restraining the commission of certain acts, and the court ordered among other things:

> "That the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and they are hereby restrained pending further order of this court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to the Secretary of Interior dated November 15, 1946; * * * and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walk out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termi-

nation of agreement or through any other means or device. * * *"

[fol. 422] Thereupon the mine workers and Lewis filed a motion—as did the defendants here—to vacate and discharge the restraining order upon the grounds:

"(1) The temporary restraining order is void in that this case involves and grows out of a labor dispute. Under the provisions of the Norris-LaGuardia act (47 Stat. 70) and the provisions of section 20 of the Clayton Act, 38 U. S. Stat. c. 323, p. 730, 29 U. S. C. A. Sec. 52, this Honorable Court is without jurisdiction over the subject-matter of this cause."

* * * * * * *

"(5) The temporary restraining order is beyond the jurisdiction of this Honorable Court and therefore void because it contravenes the First, Fifth and Thirteenth Amendments to the Constitution of the United States."

The motion of the mine workers and Lewis to discharge and vacate the temporary restraining order was denied by the trial court. The court held in substance that the case did not involve or grow out of a labor dispute within the purview of the Norris-LaGuardia act and that the restraining order did not controvene the First, Fifth and Thirteenth Amendments to the United States constitution. In affirming the judgment of the trial court, the United States Supreme Court said:

"If we examine sections 4 and 13, on which defendants rely, we note that they do not purport to strip completely from the federal courts all their pre-existing powers to issue injunctions, that they withdraw this power only in a specified type of case, and that this type is a case 'involving or growing out of any labor dispute'."

While the above case was decided upon questions not presented here, it is pertinent to observe that all parties assumed that the Norris-LaGuardia act was in all respects valid, and apparently its validity was conceded.

One of the principle points upon which the above decision is predicated is that the word "person" was not broad enough to include the government and therefore that the Norris-LaGuardia act did not apply. There are many statements by the court throughout the opinion which clearly indicate that the question as to whom the act should [fol. 423] apply, and as to whether the scope thereof should be narrow or broad, is within the exclusive province of Congress.

In the course of the opinion in the United Mine Workers case, in speaking of the effect the Norris-LaGuardia act had on Clayton Act, it was pointed out that it had held in a former case "that the Norris-LaGuardia act 'still further • • • (narrowed) the circumstances under which the federal courts could grant injunctions in labor disputes'." Under the circumstances, no one could seriously contend that the Clayton act was unconstitutional or invalid because it was more liberal than the Norris-LaGuardia act or that the latter was invalid and unconstitutional because it was narrower than the former.

Defendants in the present case, however, contend in substance that if the restraining order is made permanent, they will be deprived of their rights under the First, Thirteenth, and Fourteenth Amendments to the Constitution of the United States. As noted above, defendants in the United Mine Workers and Lewis cases made the same contention but the United States Supreme Court held otherwise, and concluded:

> "We have examined the other contentions advanced by the defendants but have found them to be without merit. The temporary restraining order and the preliminary injunction were properly issued, and the acts of the district court in these respects are affirmed. • • •"

The "other contentions" mentioned by the court includes the one made by the defendants that the restraining order "contravenes the First, Fifth and Thirteenth Amendments to the Constitution of the United States."

Upon the general subject of the validity of statutes similar to the Colorado Labor Peace Act and the Norris-LaGuardia act, there is an extensive note in 124 A. L. R.,

752, supplementing earlier annotations on the subject, in which the author says:

> [fol. 424] "The cases decided since the publication of the last annotation on the present subject, in 120 ALR 316, seem to concern themselves principally with the operation and effect of the various statutes restricting the remedy of injunction in industrial disputes, particularly dealing with the questions whether the controversy in question is of the character or involves the parties contemplated by the statute in its restrictive application. *The validity of such statutes generally seem to be accepted without question.*"

On February 19, 1947—after the briefs were filed in the present case—the Supreme Court of Washington rendered a decision in *Swenson v. Seattle Central Labor Council*, (Wash.) 177 P. (2d) 873, which is very significant in the present controversy because it discusses many of the important cases cited and relied upon in the briefs herein; it answers many constitutional questions herein raised; it clarifies the law as to picketing; and because of the similarity of the facts to those in the instant case will be helpful to the trial court on further proceedings. We quote, with approval, from the opinion as written by Justice Schwellenbach:

> "Finally, it is contended that, regardless of any statute, the men had an absolute right to peacefully picket as an exercise of the right of free speech guaranteed them under the Federal constitution. Amend. 1. We have read all the decisions of the United States Supreme Court on this subject, commencing with Thornhill v. State of Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, through Carpenters and Joiners Union of America v. Ritter's Cafe, 315 U. S. 722; 62 S. Ct. 807, 808, 86 L. Ed. 1143. In the latter case, the respondent had made an agreement with a contractor named Plaster for the construction of a building in Houston, Texas. Plaster employed non-union carpenters and painters in the work. The respondent was also the owner of a cafe, a mile and a half distant from the building under construction. The new building was wholly unconnected with the cafe. All the restaurant employees were members of the Hotel and

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Restaurant Employees International Alliance, Local 808. There was no controversy between respondent and the restaurant employees. The carpenters' and painters' unions had no quarrel with respondent over his operation of the cafe. No carpenters or painters were employed there.

"But because Plaster employed non-union labor in the construction of a building a mile and a half away, [fol. 425] members of the unions picketed the respondents' cafe. Walking back and forth in front of the restaurant, a picket carried a placard which read: 'This place is Unfair to Carpenters and Joiners Union of America, Local No. 213, and Painters Local No. 130, Affiliated with American Federation of Labor.' Later, the wording was changed as follows: 'The Owner of This Cafe Has Awarded a Contract to Erect a Building to W. A. Plaster Who is Unfair to the Carpenters Union 213 and Painter Union 130, Affiliated with the American Federation of Labor'.

"The Texas court found that Ritter's Cafe was picketed 'for the avowed purpose of forcing and compelling plaintiff (Ritter) to require the said contractor, Plaster, to use and employ only members of the defendant union on the building under construction in the 2800 block on Broadway.' Contemporaneously with this picketing, the Restaurant Workers Union, Local No. 808, called Ritter's employees out on strike and withdrew the union card from his establishment. Union truck drivers refused to cross the picket line to deliver food and other supplies to the restaurant. The effect of all this was 'to prevent members of all trade-unions from patronizing plaintiff's cafe, and to erect a barrier around plaintiff's cafe, across which no member of defendant-unions or an affiliate will go.'

"The Texas court enjoined this procedure, but the decree forbade neither picketing elsewhere (including the building under construction by Plaster) nor communication of the facts of the dispute by any means other than the picketing of Ritter's restaurant.

"On page 724 of 315 U. S., on page 808 of 62 S. Ct., 86 L. Ed. 1143, the court stated:

" 'The economic contest between employer and employee has never concerned merely the immediate dis-

putants. The clash of such conflicting interests inevitably implicates the well-being of the community. Society has therefore been compelled to throw its weight into the context. The law has undertaken to balance the effort of the employer to carry on his business free from the interference of others against the effort of labor to further its economic self-interest. And every intervention of government in this struggle has in some respect abridged the freedom of action of one or the other or both.

" 'The task of mediating between these competing interests has, until recently been left largely to judicial lawmaking and not to legislation. "Courts were required, in the absence of legislation to determine what the public welfare demanded, whether it would not be best subserved by leaving the contestants free to resort to any means not involving a breach of the peace or injury to tangible property, whether it was consistent with the public interest that the contestants should be permitted to invoke the aid of others not directly [fol. 426] interested in the matter in controversy, and to what extent incidental injury to persons not parties to the controversy should be held justifiable." Mr. Justice Brandeis in Truax v. Corrigan, 257 U. S. 312, 363, 42 S. Ct. 124, 141, 66 L. Ed. 254, 27 A. L. R. 375. The right of the state to determine whether the common interest is best served by imposing some restrictions upon the use of weapons for inflicting economic injury in the struggle of conflicting industrial forces has not previously been doubted. See Mr. Justice Holmes in Aikens v. (State of) Wisconsin, 195 U. S. 194, 205, 25 S. Ct. 3, 49 L. Ed. 154, and Mr. Justice Brandeis in Truax v. Corrigan, supra, 257 U. S. at page 372, 42 S. Ct. (124) at page 144, 66 L. Ed. 254, 27 A. L. R. 375; Dorchy v. (State of) Kansas, 272 U. S. 306, 311, 47 S. Ct. 86, 87, 71 L. Ed. 248, and Senn v. Tile Layers Protective Union, 301 U. S. 468, 481, 57 S. Ct. 857, 863, 81 L. Ed. 1229. But the petitioners now claim that there is to be found in the Due Process Clause of the Fourteenth Amendment a constitutional command that peaceful picketing must be wholly immune from regulation by the community in order to protect the general interest, that the states must be

powerless to confine the use of this industrial weapon within reasonable bounds.

" 'The constitutional right to communicate peaceably to the public the facts of a legitimate dispute is not lost merely because a labor dispute is involved. Thornhill v. (State of) Alabama, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093, or because the communication takes the form of picketing, even when the communication does not concern a dispute between an employer and those directly employed by him. American Federation of Labor v. Swing, 312 U. S. 321, 61 S. Ct. 735, 85 L. Ed. 1145. But the circumstance that a labor dispute is the occasion of exercising freedom of expression does not give that freedom any greater constitutional sanction or render it completely inviolable. Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the state to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain. Whenever state action is challenged as a denial of 'liberty', the question always is whether the state has violated 'the essential attributes of that liberty'. Mr. Chief Justice Hughes in Near v. (State of) Minnesota, 283 U. S. 697, 708, 51 S. Ct. 625, 628, 75 L. Ed. 1357. While the right of free speech is embodied in the liberty safeguarded by the Due Process Clause, that Clause postulates the authority of the states to translate into law local policies 'to promote the health, safety, morals, and general welfare of its people * * *. The limits of this sovereign power must always be determined with appropriate regard to the particular subject of its exercise.' Id., 283 U. S. at page 707, 51 S. Ct. 625, 75 L. Ed. 1357. "The boundary at which the conflicting interests balance cannot be determined by any general formula in advance, but points in the line, or helping to establish it, are fixed by decisions that this or that concrete case falls on the nearer or farther side." Hudson County Water Co. v. McCarter, 209 U. S. 349, 355, 28 S. Ct. 529, 531, 52 L. Ed. 828, 14 Ann. Cas. 560.

[fol. 427] " 'In the circumstances of the case before us Texas has declared that its general welfare would not be served if, in a controversy between a contractor and

building workers' unions, the unions were permitted to bring to bear the full weight of familiar weapons of industrial combat against a restaurant business which, as a business, has no nexus with the building dispute but which happens to be owned by a person who contracts with the builder. The precise questions is, therefore, whether the Fourteenth Amendment prohibits Texas from drawing this line in confining the area of unrestricted industrial welfare. • • •

" 'It is true that by peaceful picketing workingmen communicate their grievances. As a means of communicating the facts of a labor dispute peaceful picketing may be a phase of the constitutional right of free utterance. But recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arise- leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this line is to write into the Constitution the notion that every instance of peaceful picketing—anywhere and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause would compel the states to allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose.

" 'In forbidding such conscription of neutrals in the circumstances of the case before us, Texas represents the prevailing, and probably the unanimous, policy of the states. We hold that the Constitution does not forbid Texas to draw the line which has been drawn here. To hold otherwise would be to transmute vital constitutional liberties into doctrinaire dogma. We must be mindful that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants.'

Thornhill v. (State of) Alabama, 310 U. S. 88, 103, 104, 60 S. Ct. 736, 745, 84 L. Ed. 1093.

"The United States Supreme Court has, by these cases, established this rule: Peaceful picketing is an exercise of the right of free speech. Organized labor has the right to communicate its views either by word of mouth or by the use of placards. This is nothing more nor less than a method of persuasion. But when picketing ceases to be used for the purpose of persuasion—just the minute it steps over the line from per- [fol. 428] suasion to coercion—it loses the protection of the constitutional guaranty of free speech, and a person or persons injured by its act may apply to a court of equity for relief.

"The facts in this case convince us that the picketing complained of did not constitute an exercise of free speech as contemplated by our founding fathers. Neither was it a means of communicating the facts of a labor dispute as interpreted by the United States Supreme Court. The National Labor Relations Board had, by order, designated the International Association of Machinists as the exclusive bargaining agency of all the employees at the plant. The purpose of the picketing was to force the employer to deal with the picketing unions in defiance of this order, under the threat that, should he refuse to do so, his plant would be closed and his equipment prevented from being installed any place in the United States. This was coercion. Appellant was forced to close his plant. This resulted in irreparable loss to him, and his employees were thrown out of employment. He had no adequate remedy at law. The restraining order theretofore entered should have been continued."

The conclusion is inescapable, and we so hold that the Colorado Labor Peace Act, in so far as applicable here, is in all respects constitutional, valid and enforceable, and that this is not a case "involving or growing out of a labor dispute" as defined in the act. We also hold that there is no merit to the contentions of the defendants in error that their constitutional rights under the First, Thirteenth, and Fourteenth Amendments to the Federal Constitution will be violated if the injunction is made permanent.

The judgment is reversed and the cause remanded with instructions to reinstate the restraining order and make the same permanent, and for further proceedings with respect to damages and otherwise as may be necessary, such proceedings to be in harmony with the views herein expressed.

Mr. Justice Stone and Mr. Justice Hilliard concurring in part and dissenting in part.

Mr. Justice Jackson concurs in the conclusion.

[fol. 429] IN SUPREME COURT OF COLORADO

OPINION—May 19, 1947

Mr. Justice STONE concurring in part and dissenting in part:

Temporary injunction in this case was issued on the basis of the allegations of the complaint. Permanent injunction must be justified by the evidence.

Counsel for plaintiffs in their brief urge reversal on the ground of assertedly tortious acts concerning which evidence was adduced at the trial. The acts upon which plaintiffs rely are set out in their brief and may be summarized as follows:

First: Threats to injure and destroy the business of plaintiffs unless they should sign union contracts. The only threats testified to were vague and general, such as the alleged statement to the owner of a truck line that "we will get you by hook or crook," and the Beach, that if he would not join the union, "the union will put forth every effort to destroy the Beach Milk Company as a business." Such vague and indefinite threats, even in the absence of denial, were not sufficiently specific and definite to constitute a background of violence in connection with other acts or to serve as basis of claim for damages or injunction.

Second: Display of force against the truck drivers of non-union carriers and dogging them on their routes. The only evidence in the record as to this charge is that on one occasion, some twelve days before this action was begun, several union representatives congregated in cars across from the headquarters of a trucking concern and that one or more of them in a car followed each of the truckers as

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he went over his route picking up cream and carrying it to its destination in the city of Denver. As the trial court found, this "instilled fear into the heart of the driver." [fol. 430] Defendants say this action was taken for the purpose of investigating the sources from which the nonunion truckers obtained their milk and the destination to which it was delivered. There was no actual interference, no work of threat, no prevention of any trucker from carrying out his duties, and no attempt or threat of repetition of the act. No ground for damages or injunction can be based thereon.

Third: Prevention of non-union carriers from delivering milk to union dairies by means of directions given employees, by picketing union dairies and by threatening strike. The evidence as to this charge discloses that for the purpose of accomplishing the objective of the union to organize the entire milk trucking industry in Denver, representatives of the union were stationed about certain union milk processing plants and that when a driver approached such plant he was asked if he had a union card; if not, he was quietly asked to join the union. Upon his refusal he was told he could not unload at that plant and, when he approached the dock, the union employees there refused to handle the milk. On one occasion a picket was posted at a union plant, but upon protest by the manager, he was told it was a mistake and the picket was withdrawn. This act may be considered together with a fourth act charged by plaintiffs: that the defendants threw a picket line around the plant of the Beach Milk Company with the customary "unfair" legend and with the usual result of preventing delivery of milk by union drivers and interferring with the delivery of supplies and materials and helping induce union bricklayers engaged in urgent construction work at the plant to cease work. The evidence discloses that after soliciting Beach to sign an all-union contract without [fol. 431] success, the defendants threw a picket line about the Beach plant consisting of one picket carrying an "unfair" sign. The first day there were four or five other union members standing across the street. Thereafter there was seldom any union member present except the picket. There was no violence, nor threat of violence. There was occasional soliciting of an employee to join the Union, but no interference or persistence in so doing. Did such acts, third and fourth, constitute unfair labor practice

under the terms of the Colorado Labor Peace Act, and if so, were they sufficient basis for damages and injunction?

In answering this question we are not dealing with novel translation of economic theory, but with rules of constitutional right which, even if apparently not following earlier trends of interpretation, have been repeatedly declared by this court and the Supreme Court of the United States. At the time of the passage of the Labor Peace Act this court in *People* v. *Harris*, 104 Colo. 386, 91 P. (2d) 989, *Denver Union* v. *Truck Lines*, 106 Colo. 25, 101 P. (2d) 486, and *Denver Union* v. *Buckingham Co.*, 108 Colo. 419, 118 P. (2d) 1088, and the United States Supreme Court in *Thornhill* v. *Alabama*, 310 U. S. 88, 60 S. Ct. 735, 84 L. Ed. 1093, and *American Federation of Labor* v. *Swing*, 312 U. S. 321, 61 Sup. 568, 85 L. Ed. 855, had declared that peaceful picketing is a form of free speech, and, as such, protected by constitutional guaranty.

Perhaps because of actual familiarity with those decisions, the legislature specifically declared in the Labor Peace Act (S. L. '43, c. 131), that, "The right of both employer and employee freely to express, declare and publish [fol. 432] their respective views and proposals concerning any labor relationship shall not be abrogated or limited by this act, nor shall the exercise of such right constitute an unfair labor practice," section 7(2), and further declared in section 24, "nor shall anything in this act be so construed as unlawfully to invade the right to freedom of speech." The provision in section 6(e) declaring that to cooperate in engaging in or inducing picketing is an unfair labor practice must, then, be construed in harmony with section 7(2) and 24 as to the right of free speech, if possible, and so construed, the word "picketing" as employed in the act must be held as intended in its coercive, and not in its persuasive, sense. Otherwise the limitation on picketing constitutes a limitation on the right to express views concerning labor relationships and invades the right to freedom of speech, contrary to the explicit provisions of the statute.

That such is the proper interpretation is borne out by the fact that our Labor Peace Act was patterned on, and followed closely, the Wisconsin Labor Peace Act. Our provision as to picketing is copied verbatim from the Wisconsin act. The Supreme Court of Wisconsin in *Hotel Employees Local* v. *Board*, 236 Wis. 329, 294 N. W. 632, affirmed a judgment restraining picketing as an unfair labor practice. The

case was taken to the United States Supreme Court on the ground that it enjoined peaceful picketing and consequently freedom of speech. That court, speaking through Frankfurter, J., said: "Precisely what restraints Wisconsin has imposed upon the petitioners is for the Wisconsin Supreme Court to determine, * * * And that court has unambiguously rejected the construction upon which the claim of the petitioners rests.

"That the order forbids only violence, and that it permits peaceful picketing by these petitioners, is made abundantly clear by the expressions of the court: 'The act does not [fol. 433] limit the right of an employee to speak freely. * * * The term "picketing" as used in (the act), does not include acts held in the *Thornhill case, supra,* to be within the protection of the constitutional guaranty of the right of free speech. The express language of the act forbids such a construction. It clearly refers to that kind of picketing which the *Thornhill case* says the state has power to deal with "as a part of its power to preserve the peace, and protect the privacy, the lives and the property of its residents."' * * * In this case it is undisputed that numerous assaults were committed by the pickets, that the pickets acted in concert; that the fines of these pickets were paid by the union; that ingress and egress to and from the premises of the employer were prevented by force and arms. It was at conduct of that kind that the statute was aimed. It is conduct of that kind that is dealt with in this case. It is conduct of that kind that is declared to be an unfair labor practice by the statute and from which the defendants are ordered to cease and desist." *Hotel & Restaurant Employees' Local* v. *Board,* 315 U. S. 437, 62 Sup. Ct. 706, 86 L. Ed. 946. See, annotation, 149 A. L. R., at page 469.

So construing our Labor Peace Act, there is no actional claim, nor ground for injunction resulting either from the so-called picketing at the union creameries or from the picketing at the Beach plant. Neither was a violation of the Act.

Whether injunction would lie if peaceful picketing were specifically forbidden by the act we are not now called upon to determine, but, note the statement of Jackson, J., in the [fol. 434] opinion of the court in *Bakery etc., Drivers Local* v. *Wohl,* 315 U. S. 769 (62 Sup. Ct. 816, 86 L. Ed. 1178) at page 774; So far as we can ascertain from the opinion delivered by the state courts in this case, those courts were

concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes, and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not follow; one need not be in a 'labor dispute' as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive." As to the peaceful picketing there considered, the court said: "We ourselves can perceive no substantive evil of such magnitude as to mark a limit to the right of free speech which the petitioners sought to exercise. The record in this case does not contain the slightest suggestion of embarrassment in the task of governance; there are no findings and no circumstances from which we can draw the inference that the publication was attended or likely to be attended by violence, force or coercion, or conduct otherwise unlawful or oppressive; and it is not indicated that there was an actual or threatened abuse of the right to free speech through the use of excessive picketing. A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual. But so far as we can tell, respondents' mobility and their insulation from the public as middlemen made it practically impossible for petitioners to make known their legitimate grievances to the public whose patronage was sustaining the peddler system [fol. 435] except by the means here employed and contemplated; and those means are such as to have slight, if any, repercussions upon the interests of strangers to the issue."

As a fifth act, plaintiffs charge that the defendant caused union bricklayers who were engaged in necessary construction work at the Beach Dairy to cease work to the damage of plaintiff Beach. There is no suggestion, either in the brief or the evidence, that the work stoppage was caused by any act other than the picketing of the Beach plant hereinabove discussed, and the consequent refusal of the union bricklayers to cross the picket line. Such charge is not a separate act, but only one of the results of the act of picketing hereinabove discussed.

As a sixth and last tortious act plaintiff charges that the defendants called upon the managers of the Piggly-Wiggly stores, some twenty-five in number, in and near the city of

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Denver and threatened to picket those stores unless they immediately ceased to sell milk of the Beach dairy. This charge is sustained by the evidence. As said by the trial court in its findings: "In carrying out the threat of a secondary boycott made by the union representatives to the Beach Milk Company, various union officials * * * contacted Mr. E. H. Lambotte, President of the Piggly-Wiggly Stores Company * * *. Some nine owners or managers of Piggly-Wiggly stores were also contacted. * * * Mr. Lambotte was advised * * * that if Beach refused it might be necessary to establish a secondary boycott of the Piggly-Wiggly stores. * * * Coffey advised Lambotte that the union was going to picket the Piggly-Wiggly stores." Thus the trial court found that a secondary boycott was threat-
[fol. 436] ened. The purpose of the union in its dispute with Beach was to organize the milk processing industry of Denver. The Piggly-Wiggly stores, while together constituting one of Beach's best customers, were not in anyway engaged in the business of processing milk. They were engaged in the retail grocery business. Their sale of milk was a very minor part of such business. Picketing those grocery stores, as an indirect means of exerting economic pressure in a dispute involving only the milk processing industry, was a plain violation of the Labor Peace Act; it would have caused violent "repercussions upon the interests of strangers to the Issue," and it so far extends the orbit of industrial dispute and so "conscripts neutrals" as to be, I believe, within the authority of regulation by the state legislature as indicated by the decisions of the federal courts. As said in *Carpenters & Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722 (62 Sup. Ct. 807, 86 L. Ed. 1143), "Recognition of peaceful picketing as an exercise of free speech does not imply that the states must be without power to confine the sphere of communication to that directly related to the dispute. Restriction of picketing to the area of the industry within which a labor dispute arises leaves open to the disputants other traditional modes of communication. To deny to the states the power to draw this line is to write into the Constitution the notion that every instance of peaceful picketing—any where and under any circumstances—is necessarily a phase of the controversy which provoked the picketing. Such a view of the Due Process Clause (in the Fourteenth Amendment) would compel the states to

allow the disputants in a particular industrial episode to conscript neutrals having no relation to either the dispute or the industry in which it arose."

[fol. 437] Accordingly, in my opinion the injunction against threatened boycott by picketing the Piggly-Wiggly stores as unfair should be made permanent, and the case should be remanded for the determination of the question of damages, if any, suffered as a result of threat of such picketing, and that as to the other issues the action should be dismissed.

Mr. Justice Hilliard concurs in this opinion.

[fol. 438] IN THE SUPREME COURT OF COLORADO

No. 15776

MOTION FOR EXTENSION OF TIME IN WHICH TO FILE PETITION FOR REHEARING—Filed May 23, 1947

Come now the defendants in error and respectfully petition this Honorable Court to extend the time in which to file a Petition for Rehearing to and until July 1, 1947, and as grounds for said Motion show unto the Court:

1. That the matters involved in this case are of great public importance, and that it is necessary for counsel for defendants in error to confer with the general counsel for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers' Union, who are non-residents of the State of Colorado.

Philip Hornbein, Philip Hornbein, Jr., Attorneys for Defendants In Error.

[fol. 439] Counsel for plaintiffs in error hereby agree that the within Motion be granted.

R. Hickman Walker, Kenneth W. Robinson, Robert Swanson, Attorneys for Plaintiffs in Error.

[fol. 440] IN SUPREME COURT OF COLORADO

[Title omitted]

ORDER EXTENDING TIME—May 26, 1947

Upon consideration of the motion of the defendants in error, and also the consent of the plaintiffs in error thereto; it is this day ordered that the defendants in error have to and including July 1, 1947, in which to file a petition for rehearing.

[fol. 441] IN THE SUPREME COURT OF COLORADO

[Title omitted]

PETITION FOR REHEARING—Filed June 24, 1947

[fol. 442] Now come the above-named defendants in error, save and except Daniel J. Tobin, as President of the International and personally, Dave Beck, as officer and business agent and Western States Organizer of the International, and personally, and the American Federation of Labor, and move the Court to grant a rehearing for the following reasons:

1. The Court overlooked the statement in our printed brief in the first paragraph thereof on page 2.

> "We appear for all the defendants in error save and except the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers; American Federation of Labor; Daniel J. Tobin, as President of the International and personally; Dave Beck, as officer and business agent and Western States Organizer of the International, and personally. As to the above-named defendants in error, the American Federation of Labor, Daniel J. Tobin and Dave Beck, there was no service or claim of service in the Court below, and we have no authority to appear for them. As to the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, we interposed a Motion in the Court below to quash this service for the reason that the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers was not subject to

the jurisdiction of the Courts of Colorado, and that the person upon whom service was made was not a proper person for service within the Rules of Civil Procedure."

[fol. 443] Daniel J. Tobin and Dave Beck and the American Federation of Labor named as defendants were not in the jurisdiction of the Court and were never served with process as appears from the return made on the summons (Folios 45-49, original transcript of the Record).

That the names of the above-named persons should be deleted from the judgment in this case because they were never in the jurisdiction of the Court and were never served and never appeared.

2. That the Court overlooked Rule 65(d) of the Rules of Civil Procedure which provides:

> "Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. * * *"

That the temporary restraining order which this Court orders to be made permanent enjoins the defendants from

> "3. In any manner interfering with the delivery of the products of the Company to said Piggly Wiggly or other stores." (Page 9 of the Opinion.)

That the injunction in this respect does not comply with the Rule in that it is not specific in terms and does not advise these defendants as to what they may or may not do.

[fol. 444] 3. That while the Court in the majority opinion compares the procedure in this case with the procedure followed in the recent case of *United States v. United Mine Workers of America and John L. Lewis*, 67 S. Ct. 677, the Court overlooks the fact that in that case the restraining order was in all respects definite and certain, that is to say, that the defendants were

> "* * * restrained pending further order of this court from permitting to continue in effect the notice heretofore given by the defendant, John L. Lewis, to

the Secretary of Interior dated November 15, 1946; * * * and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow down, walk out, cessation of work, or otherwise, with the operation of said mines by continuing in effect the aforesaid notice or by issuing any notice of termination of agreement or through any other means or device. * * *" (Page 22 of the Opinion.)

4. That the Court in ordering an injunction against defendants because there was no labor dispute according to the Court's interpretation of the Labor Peace Act—overlooked and misapprehended the consistent rulings of the Supreme Court of the United States, as clearly pointed out in the dissenting opinion wherein it is said:

"* * * note the statement of Jackson, J., in the opinion of the court in Bakery, etc., Drivers Local v. [fol. 445] Wohl, 315 U. S. 769 (62 Sup. Ct. 816, 86 L. Ed. 1178) at page 774: 'So far as we can ascertain from the opinions delivered by the state courts in this case, those courts were concerned only with the question whether there was involved a labor dispute within the meaning of the New York statutes, and assumed that the legality of the injunction followed from a determination that such a dispute was not involved. Of course that does not follow: one need not be in a "labor dispute" as defined by state law to have a right under the Fourteenth Amendment to express a grievance in a labor matter by publication unattended by violence, coercion, or conduct otherwise unlawful or oppressive.'" (Page 4 of the dissenting opinion.)

The other cases of the United States Supreme Court cited in the dissenting opinion are also directly relevant.

5. We renew our challenge to the validity of the injunction in that it contravenes the Thirteenth and Fourteenth Amendments of the Constitution of the United States and re-assert our claim that the Colorado Labor Peace Act as construed by the Court deprives us of the Constitutional protection and guarantees of the Thirteenth and Fourteenth

Amendments of the United States Constitution, all of which is set out at length in our brief heretofore filed.

Respectfully submitted, Philip Hornbein, Philip Hornbein, Jr., 620 Symes Bldg., Denver (2), Colorado, Attorneys for Defendants in Error.

[fol. 446] IN SUPREME COURT OF COLORADO

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—July 7, 1947

The Court having considered the petition for a rehearing in this cause, and being now well and fully advised in the premises, doth order that said petition be, and the same is hereby, denied.

(And remittitur issued.)

[fol. 447] IN THE SUPREME COURT OF COLORADO

[Title omitted]

SPECIFICATION OF POINTS—Filed March 15, 1947

It is stipulated by and between the parties hereto that the following are the Specification of Points as urged by plaintiffs in error and that they shall be considered as part of plaintiffs in error's brief:

1. That the court misapprehended the operation of the provision of the Colorado Labor Peace Act defining a "Labor Dispute" for the purposes of that Act, and erroneously held that that section was unconstitutional, whether considered standing alone or in connection with other provisions of the Act.

2. That the court erred in holding that the picketing of the Beach Dairy and of Borgmann and Austin, carriers, was lawful.

[fol. 448] 3. That the court erred in holding that the secondary boycott instituted against the Piggly Wiggly Stores was lawful.

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4. That the court erred in holding that the secondary boycott carried on against Borgmann and Austin Brothers, carriers, was lawful.

5. That the court erred in holding that the assemblage of a large number of persons in the vicinity of the place of work of the Austin Brothers' employees and the following of said employees was lawful.

6. That the court erred in failing and refusing to grant the injunctions prayed for in all five cases and in dismissing said causes all contrary to the law and the evidence.

Kenneth W. Robinson, R. Hickman Walker, Robert Swanson, Attorneys for Plaintiffs in Error. Philip Hornbein, Philip Hornbein, Jr., Attorneys for Defendants in Error.

[fol. 449] [File endorsement omitted]

IN THE SUPREME COURT OF COLORADO

[Title omitted]

ASSIGNMENTS OF ERROR—Filed August 19, 1947

Come now the above-named defendants in error and as appellants to the Supreme Court of the United States from the judgment and decision heretofore entered assign as error:

1. The Supreme Court of Colorado erred in holding that the Colorado Labor Peace Act, 1943 Session Laws of Colorado, Chapter 131, is constitutional, valid and enforceable as applied to the facts of this case.

2. The Supreme Court of Colorado erred in failing to hold that Sections 6(2)(a); 6(2)(b); 6(2)(f); 6(2)(g) and [fol. 450] 8(1) of the Colorado Labor Peace Act as applied to the facts of this case are repugnant to the Thirteenth Amendment of the Constitution of the United States in that the said sections of the statute as applied by the Supreme Court of Colorado to the facts of this case compel appellants to perform involuntary work and labor.

3. The Supreme Court of Colorado erred in failing to hold that Sections 6(2)(a); 6(2)(b); 6(20)(f); 6(20)(g),

and 8(1) of the Colorado Labor Peace Act as applied to the facts of this case are repugnant to the Fourteenth Amendment of the Constitution of the United States in that the said sections of the statute as applied by the Supreme Court of Colorado to the facts of this case deprive appellants of their right of free speech and expression guaranteed by the Fourteenth Amendment of the Constitution of the United States.

4. The Supreme Court of Colorado erred in failing to hold that Sections 6(2)(a); 6(2)(b); 6(2)(f); 6(2)(g) and 8(1) of the Colorado Labor Peace Act as applied to the facts of this case are invalid in that they deny to appellants the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

5. The Supreme Court of Colorado erred in ordering the District Court to re-instate and make permanent an injunction against appellants restraining them from:

> "1. In any manner establishing and maintaining a secondary boycott against the products of Beach Milk Co., at any of the Piggly-Wiggly stores in Denver, Arvada and Aurora, Colorado, or at any other store in Colorado which purchases the products of the Company for resale to its customers.
>
> "2. In any manner establishing and maintaining pickets against or about the products of the Beach Milk Co., and against said Beach Milk Co. at or about any of said stores, and in any manner publishing it as unfair to union labor to the customers of said stores, and in any manner preventing the delivery of the products of said Company to said stores.
>
> "3. In any manner interfering with the delivery of the products of the Company to said Piggly Wiggly or other stores.
>
> "4. In any manner, as members of Retail Clerks Union No. 7, American Federation of Labor, refusing [fol. 451] to handle and sell the products of said Company, when delivered at the Piggly Wiggly or other stores which purchased the said products prior to September 20, 1945." (Page 9 of the opinion of the Supreme Court.)

in that such injunction deprives appellants of their right of free speech guaranteed by the Fourteenth Amendment

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and in that said injunction compels appellants to render involuntary labor contrary to the provisions of the Thirteenth Amendment of the Constitution of the United States.

Wherefore, appellants pray that said judgment and decision may be reversed and that a judgment be rendered in favor of the appellants.

Philip Hornbein, Philip Hornbein, Jr., Attorneys for Appellants, 620 Symes Building, Denver 2, Colorado—Ta. 5174.

[fol. 452] [File endorsement omitted]

IN THE SUPREME COURT OF COLORADO

[Title omitted]

PETITION FOR ALLOWANCE OF APPEAL FROM THE SUPREME COURT OF THE STATE OF COLORADO TO THE SUPREME COURT OF THE UNITED STATES—Filed August 19, 1947

To the Honorable Haslett P. Burke, Chief Justice of the State of Colorado:

Come now the above-named defendants in error as petitioners and respectfully pray that an order be entered for allowance of an appeal to the Supreme Court of the United States from the final judgment and decision heretofore [fols. 453-512] entered in this cause, and as grounds therefor show unto this Honorable Court:

1. That heretofore and on, to-wit, May 19, 1947, this Honorable Court entered its judgment and decision in this cause. That said judgment reversed the judgment and decision of the District Court of the City and County of Denver and instructed the District Court to reinstate a restraining order previously issued, and make the same permanent and for further proceedings with respect to damages, and otherwise as may be necessary. That heretofore and on, to-wit, July 7, 1947, this Honorable Court denied petitioners' petition for rehearing in this cause whereupon the judgment and decision of the Court became final.

2. That there is error in the final judgment of the Court in this cause whereby petitioners are aggrieved in that

in the decision and judgment of this Court there was drawn in question the validity of a statute of the State of Colorado, to-wit, the Colorado Labor Peace Act, 1943 Session Laws of Colorado, on the ground of its being repugnant to, and in contravention of, the Thirteenth and Fourteenth Amendments of the Constitution of the United States, and that the decision and judgment of this Court was in favor of the validity of such statute.

Wherefore, petitioners pray for the allowance of an appeal from the aforesaid final judgment herein to the Supreme Court of the United States in order that the decision and judgment may be examined and reversed. Petitioners further pray that an order be entered directing the District Court of the City and County of Denver to return the remittitur heretofore issued.

Respectfully submitted, Philip Hornbein, Philip Hornbein, Jr., Attorneys for Petitioners, 620 Symes Building, Denver 2, Colorado—Ta. 5174.

[fol. 513] [File endorsement omitted]

IN THE SUPREME COURT OF COLORADO

[Title omitted]

ORDER ALLOWING APPEAL—Filed August 21, 1947

On reading the petition of the above-named defendants in error praying for the issuance of an order herein allowing an appeal to the Supreme Court of the United States from the Supreme Court of the State of Colorado, and it appearing from the Petition, Statement of Jurisdiction, and the Record of the above-entitled cause, that there was drawn in question the validity of a statute of the State of Colorado, to-wit; the Colorado Labor Peace Act, 1943 Session Laws of [fols. 514-516] Colorado, Chapter 131, on the ground that said statute is repugnant to the Constitution of the United States, and that the decision of this Court was in favor of the validity of said statute,

Now, therefore, it is ordered by the undersigned, the Chief Justice of the Supreme Court of the State of Colorado that said appeal, be and the same is hereby allowed, and

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It is further ordered that the defendants in error as appellants to the Supreme Court of the United States, execute to the plaintiffs in error, their bond with surety to be approved by the undersigned in the sum of $2,500.00 conditioned according to law, and

It is further ordered that the clerk of this court, within sixty days from this date, make and transmit to the clerk of the United States Supreme Court under his hand and the seal of this court, a transcript of the record herein containing a true copy of all material parts of the record herein, which shall be designated by praecipe filed with him by any of the parties hereto, and

• • • • • • •

Done this 21st day of August, 1947.

H. P. Burke, Chief Justice of the Supreme Court of the State of Colorado.

[fol. 517] [File endorsement omitted]

IN THE SUPREME COURT OF COLORADO

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed August 29, 1947

To the Clerk of the Supreme Court of the State of Colorado:

Kindly prepare for transmittal to the Supreme Court of the United States a true copy of the following parts of the record in this case:

1. ——.
2. Abstract of Record, with defendants' exhibit "3".
3. Supplemental Abstract of Record.
4. Motion of Attorney General to appear as Amicus Curiae.
5. Judgment and Opinion of the Court.
6. Motion to Extend Time for Filing Petition for Rehearing.
7. Order granting motion to extend time to file petition for rehearing.

[fols. 518-520] 8. Petition for rehearing.
9. Order denying rehearing.
10. ——.
11. Assignment of Errors to the Supreme Court of Colorado.
12. Assignment of Errors to the Supreme Court of the United States.
13. Petition for Allowance of Appeal.
14. Statement of Jurisdiction.
15. Service of Appeal Papers.
16. Bond on Appeal.
17. Proof of Service of Papers required by Rule 12.
18. Order allowing Appeal.
19. Citation to Appellees.
20. Return on Citation to Appellees.
21. Praecipe for transcript of record.

Respectfully submitted, Philip Hornbein, Philip Hornbein, Jr., Attorneys for Defendants in Error, 620 Symes Building, Denver 2, Colorado.

[fol. 521] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY—Filed October 24, 1947

1. The Supreme Court of Colorado erred in holding that the Colorado Labor Peace Act, 1943 Session Laws of Colorado, Chapter 131, is constitutional, valid and enforceable as applied to the facts of this case.

2. The Supreme Court of Colorado erred in failing to hold that Sections 6(2)(a); 6(2)(b); 6(2)(f); 6(2)(g) and 8(1) of the Colorado Labor Peace Act as applied to the facts of this case are repugnant to the Thirteenth Amendment of the Constitution of the United States in that the said sections of the statute as applied by the Supreme Court of Colorado to the facts of this case compel appellants to [fol. 522] perform involuntary work and labor.

3. The Supreme Court of Colorado erred in failing to hold that Sections 6(2)(a); 6(2)(b); 6(2)(f); 6(2)(g), and 8(1) of the Colorado Labor Peace Act as applied to the facts of this case are repugnant to the Fourteenth Amend-

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ment of the Constitution of the United States in that the said sections of the statute as applied by the Supreme Court of Colorado to the facts of this case deprive appellants of their right of free speech and expression guaranteed by the Fourteenth Amendment of the Constitution of the United States.

4. The Supreme Court of Colorado erred in failing to hold that Sections 6(2)(a); 6(2)(b); 6(2)(f); 6(2)(g) and 8(1) of the Colorado Labor Peace Act as applied to the facts of this case are invalid in that they deny to appellants the equal protection of the laws guaranteed by the Fourteenth Amendment of the Constitution of the United States.

5. The Supreme Court of Colorado erred in ordering the District Court to re-instate and make permanent an injunction against appellants restraining them from:

> "1. In any manner establishing and maintaining a secondary boycott against the products of Beach Milk Co., at any of the Piggly-Wiggly stores in Denver, Arvada and Aurora, Colorado, or at any other store in Colorado which purchases the products of the Company for resale to its customers.
>
> "2. In any manner establishing and maintaining pickets against or about the products of the Beach Milk Co., and against said Beach Milk Co. at or about any of said stores, and in any manner publishing it as unfair to union labor to the customers of said stores, and in any manner preventing the delivery of the products of said Company to said stores.
>
> "3. In any manner interfering with the delivery of the products of the Company to said Piggly Wiggly or other stores.
>
> "4. In any manner, as members of Retail Clerks Union No. 7, American Federation of Labor, refusing to handle and sell the products of said Company, when delivered at the Piggly Wiggly or other stores which purchased the said products prior to September 20, 1945." (Page 9 of the opinion of the Supreme Court.)

in that such injunction deprives appellants of their right of free speech guaranteed by the Fourteenth Amendment and in that said injunction compels appellants to render in-[fol. 523] voluntary labor contrary to the provisions of the

Thirteenth Amendment of the Constitution of the United States.

Philip Hornbein, Jr., Attorney for Appellants, 620 Symes Building, Denver 2, Colorado—Ta. 5174.

Received of Attorney for Appellants a true and correct copy of the within Statement of Points on which Appellants Intend to Rely, this 22nd day of October, 1947.

Kenneth W. Robinson, by Robert Swanson, Attorney for Appellees.

[fol. 524] SUPREME COURT OF THE UNITED STATES

DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed October 24, 1947

Appellants respectfully designate the following portions of the Record to be printed:

1. Abstract of Record.
2. Supplemental Abstract of Record.
3. Assignments of Error.
4. Motion of Attorney General to file brief as Amicus Curiae.
5. Judgment of Supreme Court of Colorado.
6. Opinion of the Supreme Court of Colorado.
7. Motion for extension of time within which to file Petition for Rehearing.

[fol. 525] 8. Order granting extension of time within which to file Petition for Rehearing.

9. Petition for Rehearing.
10. Order denying Petition for Rehearing.
11. Statement of points to be relied upon.
12. Designation of record to be printed.
13. Opinion of the District Court in and for the City and County of Denver, State of Colorado.
14. Order of Supreme Court of Colorado allowing appeal to the Supreme Court of the United States.

Philip Hornbein, Jr., Attorney for Appellants, 620 Symes Building, Denver 2, Colorado—Ta. 5174.

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Received of Attorney for Appellants a true and correct copy of the within Designation of Parts of Record to be Printed this 22nd day of October, 1947.

Kenneth W. Robinson, by Robert Swanson, Attorney for Appellees.

[fol. 525a] [File endorsement omitted.]

[fol. 526] Supreme Court of the United States

Stipulation as to Printing of Record—Filed October 31, 1947

It is hereby agreed and stipulated by and between the parties hereto through their respective attorneys that the complete text of the opinion of the District Court in and for the City and County of Denver, State of Colorado, shall be included in the printed record in this case.

Dated this 27th day of October, 1947, at Denver, Colorado.

Philip Hornbein, Jr., Attorney for Appellants; Kenneth W. Robinson, by Robert Swanson, Attorney for Appellees.

[fol. 526a] [File endorsement omitted.]

[fol. 527] Supreme Court of the United States

Order Noting Probable Jurisdiction—November 10, 1947

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

Endorsed on Cover: File No. 52,627, Colorado, Supreme Court. Term No. 397. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers' Union, et al., Appellants, vs. Denver Milk Producers, Inc., Harold Hennigh, E. W. Johnson, et al. Filed October 13, 1947. Term No. 397 O. T. 1947.